

SUBCHAPTER B—COOPERATIVE CONTROL AND ERADICATION OF LIVESTOCK OR POULTRY DISEASES

PART 49—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER CERTAIN ACTS

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AUTHORITY: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 48 FR 30094, June 30, 1983, unless otherwise noted.

Subpart A—General

§49.1 Scope and applicability of rules of practice.

The Uniform Rules of Practice for the Department of Agriculture promulgated in subpart H of part 1, subtitle A, title 7, Code of Federal Regulations, are the Rules of Practice applicable to adjudicatory, administrative proceedings under the following statutory provisions:

Act of May 29, 1884, commonly known as the Animal Industry Act, section 7, as amended (21 U.S.C. 117),

Act of February 2, 1903, commonly known as the Cattle Contagious Diseases Act of 1903, section 3, as amended (21 U.S.C. 122),

Act of March 3, 1905, Section 6, as amended (21 U.S.C. 127),

Act of July 2, 1962, section 6(a), as amended (21 U.S.C. 134e).

The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*)

In addition, the Supplemental Rules of Practice set forth in subpart B of this part shall be applicable to such proceedings.

[48 FR 30094, June 30, 1983, as amended at 68 FR 6342, Feb. 7, 2003]

Subpart B—Supplemental Rules of Practice

§49.10 Stipulations.

(a) At any time prior to the issuance of a complaint seeking a civil penalty under any of the Acts listed in §49.1, the Administrator, in his discretion, may enter into a stipulation with any person in which:

(1) The Administrator or the Administrator's delegate gives notice of an apparent violation of the applicable Act, or the regulations issued thereunder, by such person and affords such person an opportunity for a hearing regarding the matter as provided by such Act;

(2) Such person expressly waives hearing and agrees to pay a specified penalty within a designated time; and

(3) The Administrator agrees to accept the penalty in settlement of the particular matter involved if the penalty is paid within the designated time.

(b) If the penalty is not paid within the time designated in such a stipulation, the amount of the stipulated penalty shall not be relevant in any respect to the penalty which may be assessed after issuance of a complaint.

PART 50—ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS

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AUTHORITY: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 40 FR 27009, June 26, 1975, unless otherwise noted.

§ 50.1 Definitions.

For the purposes of this part, the following terms mean:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

APHIS representative. A veterinarian or other person employed by APHIS in animal health activities, who is authorized to perform the function involved.

Approved herd plan. A herd management and testing plan based on the disease history and movement patterns of an individual herd, designed by the herd owner and a State representative or APHIS representative to determine the disease status of livestock in the herd and to eradicate tuberculosis within the herd. The plan must be jointly approved by the State animal health official and the Veterinarian in Charge.

Captive cervid. All species of deer, elk, moose, and all other members of the

family Cervidae raised or maintained in captivity for the production of meat and other agricultural products, for sport, or for exhibition, including time such animals are moved interstate; or any wild cervid that is moved interstate, during the period of time from capture until release into the wild. A captive cervid that escapes will continue to be considered a captive cervid as long as it bears an official eartag or other identification approved by the Administrator as unique and traceable with which to trace the animal back to its herd of origin.

Department. The United States Department of Agriculture.

Designated tuberculosis epidemiologist (DTE). A State or Federal epidemiologist designated by the Administrator to make decisions concerning the use and interpretation of diagnostic tests for tuberculosis and the management of tuberculosis affected herds. A DTE has the responsibility to determine the scope of epidemiologic investigations, determine the status of animals and herds, assist in the development of individual herd plans, and coordinate disease surveillance and eradication programs within the geographic area of the DTE's responsibility.

Destroyed. Condemned under State authority and destroyed by slaughter or by death otherwise.

Heifer. A female dairy cow that has not given birth.

Herd. Except for livestock assembled at feedlots, any group of livestock maintained for at least 4 months on common ground for any purpose, or two or more groups of livestock under common ownership or supervision, geographically separated but that have an interchange or movement of livestock without regard to health status, as determined by the Administrator.

Herd depopulation. Removal by slaughter or other means of destruction of all cattle, bison, and captive cervids in a herd, as well as any other exposed livestock in the herd, prior to restocking with new livestock.

Livestock. Cattle, bison, captive cervids, swine, dairy goats, and other hoofed animals (such as llamas, alpacas, and antelope) raised or maintained in captivity for the production

of meat and other products, for sport, or for exhibition.

Milking cow. A female dairy cow that has given birth and is being used for milk production.

Mortgage. Any mortgage, lien or other security or interest that is recorded under State law or identified in the indemnity claim form filed under § 50.12 and held by any person other than the one claiming indemnity.

Net salvage. The amount received for animals destroyed because of tuberculosis, after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner.

Owner. Any person who has a legal or rightful title to livestock whether or not they are subject to a mortgage.

Permit. A permit for movement of livestock directly to slaughter, listing the disease status and identification of the animal, where consigned, cleaning and disinfection requirements, and proof of slaughter certification.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company, or any organized group of any of the foregoing.

Quarantined feedlot. A confined area under the direct supervision and control of a State livestock official who shall establish procedures for the accounting of all livestock entering or leaving the area. The quarantined feedlot shall be maintained for finish feeding of livestock in drylot with no provision for pasturing and grazing. All livestock leaving such feedlot must only move directly to slaughter in accordance with established procedures for handling quarantined livestock.

Reactor cattle, bison, and captive cervids. Cattle, bison, and captive cervids are classified as reactors for tuberculosis in accordance with the "Uniform Methods and Rules Bovine Tuberculosis Eradication," based on a positive response to an official tuberculin test.

Registered livestock. Livestock for which individual records of ancestry are maintained, and for which individual registration certificates are issued and recorded by a recognized breed association whose purpose is the improvement of the breed.

State. Any State, territory, the District of Columbia, or Puerto Rico.

State animal health official. The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs in that State.

State representative. A veterinarian or other person who is employed in livestock sanitary work of a State or a political subdivision of a State and who is authorized by the State or political subdivision to perform the function involved under a memorandum of understanding with the Department.

Tuberculosis. The contagious, infectious, and communicable disease caused by *Mycobacterium bovis*.

Veterinarian in Charge. The veterinary official of APHIS who is assigned by the Administrator to supervise and perform official animal health work of APHIS in the State concerned.

[40 FR 27009, June 26, 1975, as amended at 45 FR 32287, May 16, 1980; 51 FR 33735, Sept. 23, 1986; 52 FR 1317, Jan. 13, 1987; 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 58 FR 34698, June 29, 1993; 60 FR 37808, July 24, 1995; 63 FR 34263, June 24, 1998; 63 FR 72122, Dec. 31, 1998; 67 FR 7590, Feb. 20, 2002; 67 FR 48750, July 26, 2002]

Subpart A—General Indemnity

§ 50.2 Applicability of this subpart; cooperation with States.

(a) The provisions of this subpart apply to all payments made by the Department for the destruction of animals because of tuberculosis, except as specifically provided in subpart B of this part.

(b) The Administrator cooperates with the proper State authorities in the eradication of tuberculosis and pays Federal indemnities for the destruction of cattle, bison, captive cervids, or swine affected with or exposed to tuberculosis.

[67 FR 48751, July 26, 2002]

§ 50.3 Payment to owners for animals destroyed.

(a) The Administrator is authorized to agree on the part of the Department to pay indemnity to owners of the following animals:

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(1) Cattle, bison, or captive cervids destroyed because the animals are infected with or exposed to tuberculosis;

(2) Cattle, bison, or captive cervids that have been classified as suspect for tuberculosis, except that the payment of indemnity for the destruction of suspect cattle, bison, and captive cervids will be withheld until the tuberculosis status of the suspect animal has been determined and, if the cattle, bison, or captive cervid is found to be infected with tuberculosis, until all cattle, bison, and captive cervids 12 months of age or older in the claimant's herd have been tested for tuberculosis under APHIS or State supervision; and

(3) Other livestock destroyed because they are classified as exposed to tuberculosis by the designated tuberculosis epidemiologist by reason of an association with an affected herd of cattle, bison, or captive cervids.

(b) In each case, the joint State-Federal indemnity paid, together with the amount for net salvage the owner receives, may not exceed the appraised value of the animal, as determined in accordance with § 50.9. Additionally, the Department will in no case pay more than \$3,000 for an animal that is destroyed.

[67 FR 7591, Feb. 20, 2002]

§ 50.4 Classification of cattle, bison, captive cervids, and other livestock as infected, exposed, or suspect.

(a) Cattle, bison, and captive cervids are classified as infected with tuberculosis on the basis of an intradermal tuberculin test applied by a Federal, State, or an accredited veterinarian or by other diagnostic procedure approved in advance by the Administrator.

(b) Cattle, bison, and captive cervids are classified as exposed to tuberculosis when such cattle, bison, and captive cervids (1) are part of a known infected herd, or (2) are found to have moved from an infected herd before the time infection was disclosed in such herd and after the time such herd had apparently become infected, or (3) are found to have been exposed by virtue of nursing a reactor dam: *Provided*, That cattle, bison, and captive cervids classified as exposed to tuberculosis shall be removed direct to slaughter.

(c) Cattle and bison are classified as suspects for tuberculosis based on a positive response to an official tuberculin test, in accordance with the "Uniform Methods and Rules—Bovine Tuberculosis Eradication" (incorporated into the regulations by reference in part 77). Captive cervids are classified as suspects for tuberculosis in the same manner as cattle and bison.

(d) The designated tuberculosis epidemiologist will determine whether livestock other than cattle, bison, or captive cervids are classified as exposed to tuberculosis by reason of association with an affected herd of cattle, bison, or captive cervids.

[40 FR 27009, June 26, 1975, as amended at 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998; 67 FR 7591, Feb. 20, 2002]

§ 50.5 Record of tests.

When any cattle, bison, or captive cervid in a herd is classified by an APHIS or State representative or accredited veterinarian as a reactor to a test for tuberculosis, a complete test record shall be made for such herd, including the reactor tag number of each reacting animal and the registration name and number of each reacting registered animal. VS Form 6-22 or an equivalent State form shall be used for the record of any herd having any reactor to a tuberculin test. A copy of the applicable test record shall be given to the owner of any such herd, and one copy of each such record shall be furnished to the appropriate State veterinarian's office.

[40 FR 27009, June 26, 1975, as amended at 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998]

§ 50.6 Identification of animals to be destroyed because of tuberculosis.

(a) Livestock to be destroyed because of tuberculosis must be identified as follows:

(1) Livestock classified as reactors for tuberculosis must be identified within 15 days after being classified as reactors, except that the veterinarian in charge may extend the time limit for identification to 30 days when he or

she receives a request for such an extension prior to the expiration date of the original 15-day period allowed and circumstances beyond the control of the owner warrant such an extension, and the Administrator may extend the time limit for identification beyond 30 days upon request in specific cases when circumstances beyond the control of the owner warrant such an extension.

(2) Livestock other than reactors for tuberculosis that are to be destroyed because of tuberculosis must be identified prior to movement from the premises of origin to the place of destruction.

(b) *Reactor cattle, bison, and captive cervids.* Reactor cattle, bison, and captive cervids must be identified by branding the letter "T," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to the left ear an approved metal eartag bearing a serial number and the inscription "U.S. Reactor," or a similar State reactor tag. Reactor cattle, bison, and captive cervids may be moved interstate to slaughter without branding if they are permanently identified by the letters "TB" tattooed legibly in the left ear, they are sprayed on the left ear with yellow paint, and they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. The official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(c) *Exposed cattle, bison, and captive cervids.* Exposed cattle, bison, and captive cervids must be identified by branding the letter "S," at least 5 by 5 centimeters (2 by 2 inches) in size, high on the left hip near the tailhead and by attaching to either ear an approved metal eartag bearing a serial number. Exposed cattle, bison, and captive cervids may be moved interstate to slaughter without branding if they are either accompanied by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. The official seals must be applied and removed by an APHIS representative, State representative, ac-

credited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(d) *Other exposed livestock.* Livestock other than cattle, bison, or captive cervids that are destroyed under the provisions of § 50.3 must be identified by tagging with a serially numbered metal eartag attached to either ear. All such animals to be destroyed must be transported to the place of destruction in vehicles closed with seals provided by APHIS or shall be accompanied to the place of destruction by an APHIS or State representative: *Provided, however,* that animals destroyed and disposed of under the direct supervision of an APHIS or State representative on the premises where they were exposed do not require individual identification.

[67 FR 7591, Feb. 20, 2002]

§ 50.7 Destruction of animals.

(a) *Slaughter or disposal.* Livestock to be destroyed because of tuberculosis must be shipped direct to slaughter under permit to a Federal or State inspected slaughtering establishment or be disposed of by rendering, burial, or incinerating in an approved manner under supervision of an APHIS or State employee.

(b) *Time limit for destruction of animals.* Livestock for which Federal indemnity may be paid because of tuberculosis must be destroyed and carcass disposal completed within 15 days after the date of appraisal, except that the appropriate Veterinarian in Charge, for reasons satisfactory to him, may extend the time limit for slaughter to 30 days when request for such extension is received by him prior to the expiration of the original 15-day period allowed, and the Administrator may extend the time limit for slaughter beyond 30 days, upon request in specific cases and for reasons satisfactory to him.

(Approved by the Office of Management and Budget under control number 0579-0051)

[40 FR 27009, June 26, 1975, as amended at 45 FR 32287, May 16, 1980; 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998; 67 FR 7591, Feb. 20, 2002]

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§ 50.8 Payment of expenses for transporting and disposing of infected, exposed, and suspect animals.

The Department may pay, when approved in advance in writing by the Veterinarian in Charge, one half the expenses of transporting infected, exposed, or suspect livestock to slaughter or to the point where disposal will take place, and one half the expenses of destroying, burying, incinerating, rendering, or otherwise disposing of infected, exposed, or suspect livestock; *Provided that*, the Department may pay more than one-half of the expenses when the Administrator determines that doing so will contribute to the tuberculosis eradication program. For reimbursement to be made, the owner of the animals must present the Veterinarian in Charge with a copy of either a receipt for expenses paid or a bill for services rendered. Any bill for services rendered by the owner must not be greater than the normal fee for similar services provided by a commercial hauler or renderer.

[62 FR 49592, Sept. 23, 1997; as amended at 63 FR 34264, June 24, 1998; 67 FR 7591, Feb. 20, 2002]

§ 50.9 Appraisals.

(a) Livestock to be destroyed because of tuberculosis under § 50.3 must be appraised within 15 days after being classified as infected with tuberculosis, except that the veterinarian in charge may extend the time limit for appraisal to 30 days when he or she receives a request for such an extension before the end of the expiration date of the original 15-day period allowed and circumstances beyond the control of the owner warrant such an extension, and the Administrator may extend the time limit for appraisal beyond 30 days upon request in specific cases when circumstances beyond the control of the owner warrant such an extension.

(b) Animals for which indemnity is to be paid under this part must be appraised at their fair market value by an appraiser selected by APHIS. APHIS may decline to accept any appraisal that appears to it to be unreasonable or out of proportion to the value of like animals of a like quality. Should the appraisal made by the appraiser selected by APHIS be deemed inadequate

by the owner of the animals, the owner will have 15 days from the receipt of the appraisal to submit to the Administrator a request for a review of the appraisal, along with the reasons why the animals should be appraised at a higher value. The decision by the Administrator regarding the value of the animals is final.

(c) When livestock to be destroyed because of tuberculosis are appraised, due consideration will be given to their breeding value as well as to their dairy or meat value. Livestock presented for payment as registered must be accompanied by their registration papers. If the registration papers are temporarily not available, or if the livestock are less than 3 years old and unregistered, the veterinarian in charge may grant a reasonable time for the presentation of their registration papers.

[67 FR 7591, Feb. 20, 2002]

§ 50.10 Report of appraisals.

Appraisals of livestock made in accordance with § 50.9 shall be recorded on forms furnished by APHIS. The appraisal form shall be signed by the appraiser and by the owner certifying his acceptance of the appraisal. The “date of appraisal” shall be the date that the owner signs the appraisal form. The original of the appraisal form and as many copies thereof as may be required for APHIS, the State, and the owner of the animals shall be sent to the appropriate Veterinarian in Charge.

[40 FR 27009, June 26, 1975, as amended at 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998; 67 FR 7592, Feb. 20, 2002]

§ 50.11 Report of salvage proceeds.

A report of the salvage derived from the sale of each animal on which a claim for indemnity may be made under the provisions of § 50.3 shall be made on a salvage form acceptable to APHIS which shall be signed by the purchaser or his agent or by the selling agent handling the animals. If the livestock are sold by the pound, the salvage form shall show the weight, price per pound, gross receipts, expenses if any, and net proceeds. If the livestock are not sold on a per pound basis, the net purchase price of each animal must

be stated on the salvage form and an explanation showing how the amount was arrived at must be submitted. In the event the animals are not disposed of through regular slaughterers or through selling agents, the owner shall furnish, in lieu of the salvage form, an affidavit showing the amount of salvage obtained by him and shall certify that such amount is all that he has received or will receive as salvage for said animals. In an emergency, a certificate executed by the appropriate Veterinarian in Charge will be acceptable in lieu of the owner's affidavit. The salvage shall be considered to be the net amount received for an animal after deducting freight, truckage, yardage, commission, slaughtering charges, and similar costs. The original of the salvage form or the affidavit of the owner or certificate of the appropriate Veterinarian in Charge, furnished in lieu thereof, shall be furnished to the Veterinarian in charge if it is not already in his possession. Additional copies may be furnished to the State officials, if required. Destruction of livestock by burial, incineration or other disposal of carcasses shall be supervised by an APHIS or State representative who shall prepare and transmit to the Veterinarian in Charge a report identifying the animals and showing the disposition thereof.

(Approved by the Office of Management and Budget under control number 0579-0001)

[40 FR 27009, June 26, 1975, as amended at 48 FR FR 57471, Dec. 30, 1983; 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998; 67 FR 7592, Feb. 20, 2002]

§ 50.12 Claims for indemnity.

Claims for Federal indemnity for livestock destroyed because of tuberculosis shall be presented on indemnity claim forms furnished by APHIS on which the owner of the animals covered thereby shall certify that the animals are or are not, subject to any mortgage as defined in this Part. If the owner states there is a mortgage, the APHIS indemnity claim form shall be signed by the owner and by each person holding a mortgage on the animals consenting to the payment of any indemnity allowed to the person specified thereon. Payment will be made only if

the APHIS indemnity claim form has been approved by a proper State official and if payment of the claim has been recommended by the appropriate Veterinarian in Charge or an official designated by him. On claims for indemnity made under the provisions of § 50.3, the Veterinarian in Charge or official designated by him shall record on the APHIS indemnity claim form the amount of Federal and State indemnity payments that appear to be due to the owner of the animals. The owner of the animals shall be furnished a copy of the APHIS indemnity claim form. The Veterinarian in Charge or official designated by him shall then forward the APHIS indemnity claim form to the appropriate official for further action on the claim. No charges for holding the livestock on the farm pending slaughter or for trucking by the owner shall be so deducted or otherwise paid by the Department.

[40 FR 27009, June 26, 1975, as amended at 52 FR 39614, Oct. 23, 1987; 56 FR 36998, Aug. 2, 1991; 60 FR 37809, July 24, 1995; 63 FR 34264, June 24, 1998; 67 FR 7592, Feb. 20, 2002]

§ 50.13 Disinfection of premises, conveyances, and materials.

All premises, including all structures, holding facilities, conveyances, or materials which are determined by the appropriate Veterinarian in Charge to constitute a health hazard to humans or animals because of tuberculosis shall be properly cleaned and disinfected, in accordance with procedures approved by the Department, within 15 days after the removal of tuberculosis infected or exposed livestock except that the Veterinarian in Charge, for reasons satisfactory to him, may extend the time limit for disinfection to 30 days when request for such extension is received by him prior to the expiration date of the original 15-day period allowed.

[40 FR 27009, June 26, 1975, as amended at 52 FR 39614, Oct. 23, 1987; 60 FR 37809, July 24, 1995; 67 FR 7592, Feb. 20, 2002]

§ 50.14 Claims not allowed.

Claims for compensation for livestock destroyed because of tuberculosis will not be allowed in any of the following cases:

(a) The claimant has failed to comply with any of the requirements of this part:

(b) All cattle, bison, and captive cervids 12 months of age or over in the claimant's herd have not been tested for tuberculosis under APHIS or State supervision: *Provided, however*, that cattle, bison, and captive cervids destroyed because of tuberculosis are exempt from this testing requirement if the cattle, bison, and captive cervids are subjected to a postmortem examination for tuberculosis by a Federal or State veterinarian.

(c) There is substantial evidence that the owner of the animals or the agent of the owner has in any way been responsible for any attempt to obtain indemnity funds for the animals unlawfully or improperly.

(d) At the time the cattle, bison, or captive cervids in the claimant's herd were tested for tuberculosis, the cattle, bison, captive cervids, or other livestock in the herd belonged to or were on the premises of any person to whom they had been sold, shipped, or delivered for slaughter unless or until all of the cattle, bison, captive cervids, and other livestock remaining on the premises or in the herd from which the tested cattle, bison, or captive cervids originated are tested or otherwise examined for tuberculosis in a manner satisfactory to the Administrator or his or her designated representative.

(e) If the cattle, bison, or captive cervids were added to a herd while the herd was quarantined for tuberculosis, unless an approved herd plan was in effect at the time the claim was filed. As part of the approved herd plan, cattle, bison, or captive cervids added to a herd quarantined for tuberculosis must:

(1) Be from an accredited herd, as defined in § 77.1 of this chapter; or

(2)(i) Be from a herd that tested negative to an official tuberculin test, as defined in § 77.1 of this chapter, during the 60 days before the cattle, bison, or captive cervids were added to the claimant's herd; and

(ii) Have been found negative to an official tuberculin test, as defined in § 77.1 of this chapter, during the 60 days before the cattle, bison, or captive

cervids were added to the claimant's herd.

(f) For exposed cattle, bison, or captive cervids destroyed during herd depopulation, if a designated tuberculosis epidemiologist has determined that other livestock in the herd have been exposed to tuberculosis by reason of association with tuberculous livestock, and those other livestock determined to have been exposed to tuberculosis have not been destroyed.

(g) For livestock other than cattle, bison, and captive cervids that are destroyed because of association with herds of affected cattle, bison, or captive cervids:

(1) If the livestock did not reside among the herd for a period of 4 months or more;

(2) If the livestock have not received a postmortem examination for tuberculosis; or

(3) If the livestock were added to a herd that was under quarantine for tuberculosis at the time the livestock were added to the herd, unless an approved herd plan was in effect at that time.

[67 FR 7592, Feb. 20, 2002]

§§ 50.15–50.16 [Reserved]

Subpart B—Dairy Cattle and Facilities in the El Paso, Texas, Region

SOURCE: 67 FR 48751, July 26, 2002, unless otherwise noted.

§ 50.17 Payment.

(a) *Eligibility for payment.* Owners of dairy operations, including owners of dairy cattle and other property used in connection with a dairy business or fluid milk processing plant, are eligible to receive payment from the Department under this subpart in connection with a buffer zone depopulation program due to tuberculosis, provided the owners meet all applicable requirements of this subpart and the dairy cattle herd is within the area circumscribed by the following boundaries: Beginning at the point where the Hudspeth-El Paso County line intersects U.S. Highway 62; then west along U.S. Highway 62 to the El Paso Toll

Bridge; then southeast along the Rio Grande River to the Fort Hancock-El Porvenir Bridge; then northeast along spur 148 to Interstate 10; then northwest along Interstate 10 to the Hudspeth-El Paso County line; then north along the Hudspeth-El Paso County line to the point of beginning.

(b) To be eligible for payment, each of the owners of dairy cattle and other property within the area described in paragraph (a) of this section must sign and adhere to an agreement with APHIS to do the following:

(1) Cease all dairy cattle operations within the described area and dispose of all sexually intact cattle on the dairy operation premises no later than 3 years after all eligible owners have signed their respective agreements;

(2) Conduct no dairy farming or other dairy activity, including the rearing of breeding cattle, but not including the grazing or feeding of steers and spayed heifers intended for terminal market, within the area described in paragraph (a) of this section until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements.

(3) Allow a covenant to be placed on their properties where dairy operations have been conducted that will prevent the establishment of any breeding cattle operations (not including the grazing or feeding of steers and spayed heifers intended for terminal market) on the premises until the described area and the adjoining area of Mexico have been declared free of bovine tuberculosis, as determined epidemiologically by APHIS, but in any event for a period of not less than 20 years after all eligible owners have signed their respective agreements.

(4) Maintain responsibility for all cattle on the premises used in the dairy operation until those animals are removed from the premises;

(5) Make all arrangements for the removal of sexually intact cattle from the premises;

(6) Notify APHIS officials of the intended removal of all sexually intact cattle from the premises and provide

APHIS officials with the opportunity to monitor and evaluate the removal operations; and

(7) Such other terms, provisions, and conditions as agreed by each owner and APHIS.

(c) *Amount of payment for cattle and other property.* Upon approval of a claim submitted in accordance with § 50.20 of this subpart, owners eligible for payments under paragraph (a) of this section will receive payments for cattle and other property, the amount of which is determined by the following rates:

(1) For milking cows, an amount not to exceed \$2,922 per animal; and

(2) For heifers, an amount not to exceed \$834 per animal.

(d) Any dairy cattle added to a premises after the date an owner has signed the agreement required under paragraph (b) of this section will not be included in the rate calculation in paragraph (c) of this section and must be disposed of within 3 years after all eligible owners have signed their respective agreements.

(e) *Amount of payment for certain other property.* In addition to the amounts paid under paragraph (c) of this section, amounts will be paid as follows:

(1) For expenses in relocating equipment of a reverse osmosis plant in El Paso County, TX, an amount equal to the costs of relocating the plant's equipment, not to exceed \$675,000.

(2) In conjunction with the permanent closure of a fluid milk processing plant in El Paso County, TX, an amount not to exceed \$950,000, with payment to be made in the same manner and at the same times, on a pro rata basis, as payments are made to such owners for their dairy cattle and other property.

(Approved by the Office of Management and Budget under control number 0579-0193)

[67 FR 48751, July 26, 2002, as amended at 68 FR 10361, Apr. 4, 2003]

§ 50.18 Identification and disposal of cattle.

(a) All dairy cattle disposed of under this subpart must travel from the premises of origin to their final destination with an approved metal eartag, supplied by APHIS or the State

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representative, bearing a serial number and attached to each animal's left ear.

(b) Dairy cattle disposed of under this subpart must be shipped under permit either:

(1) Directly to slaughter at a Federal or State inspected slaughtering establishment; or

(2) Under permit directly to a livestock market and, under the supervision of an APHIS representative or State representative, through a livestock market pen that is dedicated to and marked exclusively for use for animals moved to slaughter, and then directly to slaughter at a Federal or State inspected slaughtering establishment.

(Approved by the Office of Management and Budget under control number 0579-0193)

§ 50.19 Report of salvage proceeds.

A report of the salvage derived from the sale of each animal for which a claim for payment is made under this subpart must be made on a salvage form acceptable to APHIS that must be signed by the purchaser or by the selling agent handling the animals. If the cattle are sold by the pound, the salvage form must show the weight, price per pound, gross receipts, expenses if any, and net proceeds. If the cattle are not sold on a per-pound basis, the net purchase price of each animal must be stated on the salvage form and an explanation showing how the amount was arrived at must be submitted. In the event the animals are not disposed of through regular slaughterers or through selling agents, the owner must furnish, in lieu of the salvage form, an affidavit showing the amount of salvage obtained by him or her and must certify that such amount is all he or she has received or will receive as salvage for the animals. The original of the salvage form or the affidavit of the owner must be furnished to the veterinarian in charge within 3 months of destruction of the animals, if such document is not already in his or her possession. Disposal of cattle by burial, incineration, or other means must be supervised by an APHIS or State representative, who will prepare and transmit to the veterinarian in charge a report identifying the animals and showing their disposition, or be docu-

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mented by an affidavit of the owner that identifies the animals and describes their disposition. The owner must provide a copy of the affidavit to the veterinarian in charge within 3 months of destruction of the animals. The salvage form, disposal certificate, or affidavit will be for information purposes only and will have no effect on the amount of any payment due.

(Approved by the Office of Management and Budget under control number 0579-0193)

§ 50.20 Claims for payment.

Claims for payment, other than for reimbursement of relocation expenses of the reverse osmosis dairy plant, must be presented on payment claim forms furnished by APHIS.³ On the claim form, the owner must certify that the animals or other property are, or are not, subject to any mortgage. If the owner states that there is a mortgage, the claim form must be signed by the owner and by each person holding a mortgage on the cattle or other property, who must agree that the person specified on the claim form may receive any payment due. The APHIS veterinarian in charge or the official designated by him or her will record on the claim form the amount of payment that appears to be due to the owner, and the owner will be furnished a copy of the APHIS payment claim form. The veterinarian in charge or official designated by him or her will then forward the APHIS payment claim form to the appropriate APHIS official for further action on the claim. The Department will not pay any costs arising from the holding of the cattle pending slaughter, or for trucking and other transportation costs, yardage, commission, slaughtering charges, or for any other costs related to having the cattle slaughtered. The owner of the reverse osmosis plant must submit copies of

³Claim forms may be obtained from the veterinarian in charge. The location of the veterinarian in charge may be obtained by writing to National Animal Health Program VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737, or by referring to the local telephone book.

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the relevant documentation for relocation of equipment to the veterinarian in charge.

(Approved by the Office of Management and Budget under control number 0579-0193)

§ 50.21 Schedule of payments.

(a) The Department will make payment, other than for reimbursement of relocation expenses of the equipment of the reverse osmosis plant, at 90-day intervals. The first payment will be made no earlier than 30 days after all owners eligible for payment have signed their agreements required under § 50.17(b). The Department will determine the amount to be paid to each owner in each payment by multiplying the total agreement amount for that owner by a fraction that is arrived at by dividing the initial census number of dairy cattle for the respective owner into the number of dairy cattle that have been removed from the owner's herd during that payment period. From this amount, 10 percent will be withheld until all animals in the herd have been disposed of and the requirements of this subpart have been met. The payments to other property owners will be determined by multiplying the total agreement amount for that other property times the same ratio as for the herd related to that other property, minus 10 percent. The Department will make payment for reimbursement of relocation expenses of the reverse osmosis plant within 30 days after the relocation of the plant is completed and the owner of the plant has submitted to APHIS all documentation of the costs of the relocation.

(b) The Department will not make final payments until the premises used for dairy operations have been without sexually intact cattle for at least 30 days and until APHIS has inspected the premises and has found them to be free of manure, except for non-solid areas such as lagoons, and free of all feedstuffs that are not in barns, containers or feeders.

§ 50.22 Claims not allowed.

The Department will not allow claims for payment if the claimant has failed to comply with any of the requirements of this subpart, or there is substantial evidence, as determined by

the Administrator, that the claimant has been responsible for any attempt to obtain payment funds for such cattle or other dairy property unlawfully or improperly.

PART 51—ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS

Subpart A—Indemnity for Cattle, Bison, and Swine

Sec.

- 51.1 Definitions.
- 51.2 Cooperation with States.
- 51.3 Payment to owners for animals destroyed.
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- 51.6 Destruction of animals; time limit for destruction of animals.
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Subpart B—Indemnity for Sheep, Goats, and Horses

- 51.20 Definitions.
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- 51.22 Payment to owners for goats, sheep, and horses destroyed.
- 51.23 Eligibility for indemnity.
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- 51.26 Record of tests.
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- 51.28 Moving goats, sheep, and horses to be destroyed.
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- 51.33 Multiple indemnity payments.

AUTHORITY: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

Subpart A—Indemnity for Cattle, Bison, and Swine

§ 51.1 Definitions.

For the purposes of this part, the following terms shall be construed, respectively, to mean:

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of

part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform functions required by cooperative state-federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

Animals. Cattle, bison, and breeding swine.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

Appraisal. An estimate of the fair market value of an animal to be destroyed because of brucellosis. The estimate shall be based upon the meat, dairy, or breeding value of the animal.

Brucellosis exposed animal. Except for a brucellosis reactor animal, any animal that: (1) Is part of or has been in contact with a herd known to be affected; or (2) has been in contact with a brucellosis reactor animal for a period of 24 hours or longer; or (3) has been in contact with a brucellosis reactor animal which has aborted, calved or farrowed within the past 30 days, or has a vaginal or uterine discharge.

Brucellosis reactor animal. Any animal classified as a brucellosis reactor as provided in the definition of official test in §78.1 of this chapter.

Claimant. A person who files a claim for indemnity under §51.7 for animals destroyed under this part.

Complete herd test. An official test for brucellosis (as defined in 9 CFR 78.1) performed under APHIS supervision in a cattle or bison herd on all cattle or bison that are (1) 6 months of age or more and not official vaccinates, except steers and spayed heifers; or (2) Official calfhood vaccinates of any age that are parturient or postparturient; or (3) Official calfhood vaccinates of beef breeds or bison with the first pair of permanent incisors fully erupted (2 years of age or more); or (4) Official calfhood vaccinates of dairy breeds with partial eruption of the first pair

of permanent incisors (20 months of age or more).

Condemn. The determination made by an APHIS representative, State representative, or accredited veterinarian that animals for which indemnity is sought under this Part shall be destroyed.

Dairy cattle. A female bovine of a recognized dairy breed over 20 months of age, which has calved or is within 90 days of parturition and which is a member of a dairy herd used to produce milk for commercial use.

Destroyed. Condemned under State authority and slaughtered or otherwise dies.

Herd. Any group of animals of the same species maintained on common ground for any purpose, or two or more groups of animals (of the same species) under common ownership or supervision, geographically separated but which have an interchange or movement of animals without regard to health status.

Herd Depopulation. Removal by slaughter or other means of destruction of all cattle, bison, or swine in a herd or from a specific premises or under common ownership prior to restocking such premises with new animals, except that steers and spayed heifers or barrows and gilts maintained for feeding purposes may be retained on the premises if the Veterinarian in Charge finds such retention to be compatible with eradication efforts. The Veterinarian in Charge may also permit removal of nonpregnant heifers, without payment of indemnity, to Quarantined Feedlots in lieu of immediate slaughter.

Herd known to be affected. Any herd in which any animal has been classified as a brucellosis reactor and which has not been released from quarantine.

Inbred or hybrid swine. Any breeding swine which are the progeny of two or more breeds of registered swine and which are maintained to produce inbred or hybrid swine, and for which records of ancestry exist through which such swine can be individually identified as progeny of said registered swine.

Mortgage. Any mortgage, lien, or other security or interest that is recorded under State law or identified in

the indemnity claim form filed under §51.7 and held by any person other than the one claiming indemnity.

Official seal. A serially numbered metal strip consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged, which cannot be reused if opened, and is applied by a representative of the Veterinarian in Charge or the State animal health official.

Owner. Any person who has a legal or rightful title to animals whether or not they are subject to a mortgage.

Permit. An official document for movement of animals under this subpart issued by an APHIS representative, state representative, or accredited veterinarian listing the disease status and identification of the animal, where consigned, cleaning and disinfecting requirements, and proof of slaughter certification.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity.

Recognized slaughtering establishment. Any slaughtering establishment operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act.¹

Registered breed association. An association formed and perpetuated for the maintenance of records of purebreeding of animal species for a specific breed whose characteristics are set forth in Constitutions, By-Laws, and other rules of the association. The records maintained by such an association shall include an Official Herd Book or other recordkeeping format and Certificates of Registration or Recordation which identify an animal as a registered animal of that registered breed association. Known registered breed associations are: American Angus Association, American Beefalo Association, Inc., The American Black Maine-Anjou Association, American Blonde d'Aquitaine Association, American Brahman Breeders Association, American Brahmental Association, Amer-

ican Breed Association, Inc., American Chianina Association, American Dexter Cattle Association, American Galloway Breeders Association, American Gelbvieh Association, American Guernsey Cattle Club, American Hereford Association, American International Charolais Association, American (International) Marchigiana Society, American Jersey Cattle Club, American Maine-Anjou Association, American Milking Shorthorn Society, American Murray Grey Association, American Normande Association, American Pinzgauer Association, American Polled Hereford Association, American Red Brangus Association, American Red Poll Association, American Salers Association, American Scotch Highland Breeders Association, American Shorthorn Association, American Simmental Association, Inc., American Tarentaise Association, Ankina Breeders, Inc., Ayrshire Breeders Association, Barzona Breed Association of America, Beefmaster Breeders Universal, Belted Galloway Society, Brahmanstein Breeders Association, Brown Swiss Beef International, Inc., Brown Swiss Cattle Breeders Association of U.S.A., Char-Swiss Breeders Association, Devon Cattle Association, Inc., Dutch Belted Cattle Association of America, Inc., Foundation Beefmaster Association, Galloway Cattle Society of America, Inc., Galloway Performance International, Holstein-Friesian Association of America, International Braford Association, International Brangus Breeders Association, Inc., International Maine-Anjou Association, Marky Cattle Association, Mid America RX³ Cattle Company, National Beefmaster Association, North American Limousin Foundation, Pan American Zebu Association, Red and White Dairy Cattle Association, Red Angus Association of America, Red Poll Beef Breeders International, Red Poll Cattle Club of America, Santa Gertrudis Breeders International, Simbrah Association, South Devon Breed Society, Sussex Cattle Association of America, Texas Longhorn Breeders Association of America, and White Park Cattle Association of America.

¹A list of recognized slaughtering establishments is available upon request from the Animal and Plant Health Inspection Service, 4700 River Road Unit 37, Riverdale, MD 20737-1231.

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Registered cattle. Cattle for which individual records of ancestry are recorded and maintained by a breed association whose purpose is the improvement of the bovine species, and for which individual registration certificates are issued and recorded by such breed association.

Registered swine. Any breeding swine for which a certificate of pure breeding has been issued by a purebred swine association.

Sexually intact exposed female calf. A female bovine less than 6 months of age that is nursed by a brucellosis reactor at the time such reactor is condemned, and that has not been altered to make it incapable of reproduction.

Specifically approved stockyard. Premises approved by the Administrator, in accordance with §71.20 of this chapter, for assembling cattle or bison for sale.²

State. Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other territory or possession of the United States.

State animal health official. The individual employed by a State who is responsible for livestock and poultry disease control and eradication programs in that State.

State representative. An individual employed in animal health activities by a State or a political subdivision thereof, and who is authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Unofficial vaccinate. Any cattle or bison which have been vaccinated for brucellosis other than in accordance with the provisions for official vaccines set forth in §78.1 of this chapter.

Veterinarian in Charge. The veterinary official of the Animal and Plant Health Inspection Service, United States Department of Agriculture, who is assigned by the Administrator to supervise and perform official animal health work of the Animal and Plant

Health Inspection Service, in the State concerned.

[42 FR 64336, Dec. 23, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §51.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§51.2 Cooperation with States.

The Administrator has been delegated the authority to cooperate with the proper State authorities in the eradication of brucellosis and to pay indemnities for the destruction of brucellosis-reactor animals or brucellosis-exposed animals.

[42 FR 64336, Dec. 23, 1977, as amended at 54 FR 32435, Aug. 8, 1989]

§51.3 Payment to owners for animals destroyed.

(a) *Cattle and bison.* The Administrator may authorize the payment of Federal indemnity by the U.S. Department of Agriculture to any owner whose cattle or bison are destroyed after having been approved for destruction by APHIS under the brucellosis eradication program.³ In all cases, the amount of Federal indemnity will be determined in accordance with the regulations in this part that were in effect on the date that reactors were found or the date that whole-herd depopulation or destruction of individual animals was approved. Prior to payment of indemnity, proof of destruction⁴ must be

³The Administrator shall authorize payment of Federal indemnity by the U.S. Department of Agriculture at the maximum per-head rates in §51.3: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) in States or areas not under Federal quarantine; (c) in States requesting payment of Federal indemnity; and (d) in States not requesting a lower rate.

⁴The Veterinarian in Charge shall accept any of the following documents as proof of destruction: (a) A postmortem report; (b) a meat inspection certification of slaughter; (c) a written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animal; (d) a written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animal; (e)

²Notices containing lists of specifically approved stockyards are published in the FEDERAL REGISTER. Lists of specifically approved stockyards also may be obtained from the State animal health official, State representatives, or APHIS representatives.

furnished to the Veterinarian in Charge.

(1) *Eligibility for indemnity.* Owners of the following types of animals destroyed because of brucellosis are eligible to receive Federal indemnity for their animals:

(i) Cattle and bison identified as reactors as a result of a complete herd test and any sexually intact exposed female calves;

(ii) Cattle and bison in a herd that has been approved for depopulation; and

(iii) Brucellosis-exposed cattle and brucellosis-exposed bison that were previously sold or traded from any herd that was, subsequent to the sale or trade, found to be affected with brucellosis. Epidemiological information such as test results, herd history, and related evidence will be used to establish a probable date when the herd was first affected with brucellosis. Animals sold after that date will be considered to be exposed; those sold before that date will not.

(2) *Maximum per-head indemnity amounts.* Owners of the types of animals described in §51.3(a)(1) are eligible to receive Federal indemnity for their animals in the following amounts:

(i) *Brucellosis reactors and sexually intact exposed female calves.* Except for brucellosis reactors and sexually intact exposed female calves destroyed as part of a whole-herd depopulation, the indemnity for cattle and bison that are brucellosis reactors shall not exceed \$250 for any registered cattle and nonregistered dairy cattle or \$50 for any bison or nonregistered cattle other than dairy cattle, and the indemnity for sexually intact exposed female calves shall not exceed \$50.

(ii) *Herd depopulations and individual exposed animals.* Owners of herds that have been approved for depopulation and owners of brucellosis-exposed cattle and brucellosis-exposed bison that meet the conditions of §51.3 (a)(1)(iii) may choose either of the two methods

described in paragraphs (a)(2)(ii)(A) and (a)(2)(ii)(B) of this section, involving fair market value of the animal to be destroyed or a fixed rate, for determining the maximum amounts of indemnity they may receive.³ The method chosen must be used for all animals to be destroyed. Owners have the option of having an appraisal done prior to choosing the method used. Appraisals will be conducted by an independent appraiser selected by the Administrator. The cost of the appraisals will be borne by APHIS.

(A) *Appraisal method.* Each eligible animal will be appraised to determine its fair market value. The indemnity shall be the appraised value, minus the salvage value.

(B) *Fixed-rate method.* The indemnity shall not exceed \$250 per animal for bison and nonregistered cattle other than dairy cattle and \$750 per animal for registered cattle and nonregistered dairy cattle.

(b) *Swine*—(1) *Brucellosis reactor swine.* The Administrator may authorize³ the payment of Federal indemnity by the United States Department of Agriculture to an owner whose breeding swine are destroyed as brucellosis reactors. The indemnity shall not exceed \$25 per head for registered, inbred, or hybrid swine, or \$10 per head for all other breeding swine. Prior to payment of indemnity, proof of destruction⁴ shall be furnished to the Veterinarian in Charge.

(2) *Herd depopulation.* The Administrator may authorize³ the payment of Federal indemnity by the United States Department of Agriculture to an owner whose herd of breeding swine or whose whole herd is destroyed because of brucellosis. The indemnity shall not exceed \$150 per head for registered, inbred, or hybrid breeding swine, and \$65 per head for all other breeding swine, except that in the case of whole herd depopulation, indemnity payments shall be paid on all swine in the herd at fair market value, as determined by the Administrator, based on an appraisal conducted by an independent appraiser assigned by the Administrator. In cases where indemnity is paid for whole herd depopulation, indemnity payments, plus any salvage, must not exceed the appraised value of

a permit (VS Form 1-27) consigning the animal from a farm or livestock market directly to a recognized slaughtering establishment; or (f) in unique situations where the documents listed above are not available, other similarly reliable forms of proof of destruction.

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each animal. Indemnity payment shall be made only for brucellosis exposed swine or for swine from a herd known to be affected and only when the Administrator determines that the destruction of all swine in the herd will contribute to the Brucellosis Eradication Program. Prior to payment of indemnity, proof of destruction⁴ shall be furnished to the Veterinarian in Charge.

(3) *Exposed swine.* The Administrator may authorize³ the payment of Federal indemnity by the United States Department of Agriculture to an owner whose breeding swine are destroyed because of brucellosis. The indemnity shall not exceed \$150 per head for registered, inbred, or hybrid swine, or \$65 per head for all other breeding swine. Indemnity payment shall be made only for such brucellosis exposed swine and only when the Administrator determines that the destruction of such swine will contribute to the Brucellosis Eradication Program. Prior to payment of indemnity, proof of destruction⁴ shall be furnished to the Veterinarian in Charge.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977, as amended at 45 FR 43679, June 27, 1980; 46 FR 13673, Feb. 23, 1981; 46 FR 57027, Nov. 20, 1981; 47 FR 53323, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 51 FR 11300, Apr. 2, 1986; 54 FR 32435, Aug. 8, 1989; 56 FR 18505, 18506, Apr. 23, 1991; 57 FR 49376, Nov. 2, 1992; 57 FR 60086, Dec. 18, 1992; 59 FR 12533, Mar. 17, 1994; 59 FR 21635, Apr. 26, 1994; 59 FR 52235, Oct. 17, 1994; 63 FR 15284, Mar. 31, 1998; 63 FR 47423, Sept. 8, 1998]

§51.4 Record of tests.

The claimant shall be responsible for providing information to an APHIS representative, State representative, or accredited veterinarian so that a complete test record may be made by such person on an APHIS approved form for each herd known to be affected, including the reactor tag number of each brucellosis reactor animal and the registration name and number of each brucellosis reactor registered animal. A copy of the applicable test record shall be given to the owner of any such herd, and one copy of each such record shall be furnished to the appropriate

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State veterinarian's office by such person who completes the test record.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977, as amended at 48 FR 57472, Dec. 30, 1983; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991]

§51.5 Identification of animals to be destroyed because of brucellosis.

(a) The claimant shall be responsible for insuring that any animal for which indemnity is claimed shall be identified in accordance with the provisions of this section within 15 days after having been classified as a reactor or for any other animal subject to this part within 15 days after having been condemned. The veterinarian in charge may extend the time limit to 30 days when a request for such extension is received by him prior to the expiration date of the original 15 day period allowed, and when he determines that the extension will not adversely affect the brucellosis eradication program; and except further, that the Administrator shall upon request in specific cases, extend the time limit beyond the 30-day period when unusual or unforeseen circumstances occur which prevent or hinder the identification of the animals within the 30-day period, such as, but not limited to, floods, storms, or other Acts of God which are beyond the control of the owner, or when identification is delayed due to requirements of another Federal Agency.

(b) Except as provided in paragraph (b)(4) of this section, cattle and bison to be destroyed because of brucellosis shall be individually identified prior to moving interstate by attaching to the left ear a metal tag bearing a serial number and the inscription "U.S. Reactor," or a similar State reactor tag, and must be:

(1) "B" branded (as defined in §78.1); or

(2) Accompanied directly to slaughter by an APHIS or State representative; or

(3) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official

seal numbers must be recorded on the accompanying permit.

(4) Reactor and exposed cattle and bison in herds scheduled for herd depopulation may be moved interstate without eartagging or branding if they are identified by USDA approved backtags and either accompanied directly to slaughter by an APHIS or State representative or moved directly to slaughter in vehicles closed with official seals. Such official seals must be applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative.

(c) Swine shall be individually identified by tagging with a metal tag bearing a serial number and inscription "U.S. Reactor" or a similar State reactor tag or other identification approved by the Administrator, upon request in specific cases, attached to the left ear of each animal.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977, as amended at 47 FR 53324, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991; 60 FR 48367, Sept. 19, 1995]

§51.6 Destruction of animals; time limit for destruction of animals.

(a) *Cattle*. The claimant shall be responsible for ensuring that cattle subject to this part shall be sold under permit to a recognized slaughtering establishment or to a specifically approved stockyard for sale to a recognized slaughtering establishment.

(b) *Bison*. The claimant shall be responsible for insuring that bison subject to this part shall be sold under permit to a State or Federal slaughtering establishment approved by the Administrator for this purpose or to a stockyard approved by the Administrator for sale to such a slaughtering establishment, *Provided, However*, That the Administrator may approve such other bison slaughtering establishments as may be deemed necessary to accomplish destruction of bison subject to this part.

(c) *Swine*. The claimant shall be responsible for insuring that swine subject to this part shall be sold under

permit to a slaughtering establishment where State or Federal Meat inspection is available, or to a market approved by the State Animal Health Official, or to a market approved by the Administrator, for sale to such slaughtering establishment;⁵ except that in the case of indemnity for whole herd depopulation, as provided for in §51.3, swine shall be destroyed, if possible, on the premises where the animals are held or penned at the time the indemnity is approved, or may be moved for destruction to another location when movement to the location is approved in advance by an APHIS representative. In cases where the swine are destroyed other than at a slaughtering establishment, the carcasses of the swine shall be disposed of by burial, incineration, or other disposal means authorized by applicable State law. The destruction and disposition of animals destroyed in accordance with this section other than at a slaughtering establishment shall be performed in the presence of an APHIS representative.

(d) *Time limit for destruction of animals*. Payment of indemnity shall be made under this part only if the animals are destroyed within 15 days after the date of identification, pursuant to §51.5 of the regulations in this part, except that the appropriate Veterinarian in Charge may extend the time limit to 30 days when request for such extension is received from the owner prior to the expiration date of the original 15-day period allowed, or when the animals were sold for slaughter prior to the expiration date of the original 15-day period, and when the Veterinarian in Charge determines that such extension will not adversely affect the Brucellosis Eradication Program; and except further, that the Administrator shall, upon request in specific cases, extend the time limit beyond the 30-day period when unusual and unforeseen circumstances occur which prevent or hinder the destruction of the animals within the 30-day period, such as, but not limited to, floods, storms, or other Acts of God which are beyond

⁵Markets are approved by the Administrator in accordance with §76.18 of this chapter.

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the control of the owner, or when destruction is delayed due to requirements of another Federal Agency.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977, as amended at 45 FR 43680, June 27, 1980; 45 FR 86410, Dec. 31, 1980; 46 FR 5861, Jan. 21, 1981; 47 FR 53324, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 51 FR 11300, Apr. 2, 1986; 51 FR 32599, Sept. 12, 1986; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991; 59 FR 12533, Mar. 17, 1994]

§51.7 Claims for indemnity.

(a) Claims for indemnity for animals destroyed because of brucellosis shall be presented on indemnity claim forms furnished by APHIS on which the owner of the animals covered thereby shall certify that the animals are or are not subject to any mortgage as defined in this part. If the owner states there is a mortgage, the APHIS indemnity claim form shall be signed by the owner and by each person holding a mortgage on the animals, consenting to the payment of any indemnity allowed to the person specified thereon. Payment will be made only if the claimant has submitted a complete indemnity claim form to, and such claim has been approved by the Veterinarian in Charge or by an APHIS representative designated by him. On claims for indemnity made under the provisions of §51.3, the Veterinarian in Charge or an APHIS representative designated by him shall record on the APHIS indemnity claim form the amount of Federal and State indemnity payments that appear to be due to the owner of the animals. The owner of the animals shall be furnished a copy of the completed APHIS indemnity claim form. The Veterinarian in Charge or an APHIS representative designated by him shall then forward the completed APHIS indemnity claim form to the Administrator for further action on the claim. No charges for holding the animals on the farm pending slaughter or for trucking by the owner shall be so deducted or otherwise paid by the United States Department of Agriculture.

(b) Claims for indemnity for registered cattle shall be accompanied by the cattle's registration papers issued in the name of the owner. If the reg-

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istration papers are unavailable or if the cattle are less than 1 year old and are not registered at the time the claim for indemnity is submitted, the Veterinarian in Charge may grant a 60-day extension or the Administrator may grant an extension longer than 60 days for the presentation of registration papers.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977. Redesignated at 46 FR 13674, Feb. 23, 1981, and 47 FR 53324, Nov. 26, 1982, and amended at 47 FR 53324, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991]

§51.8 Disinfection of premises, conveyances, and materials.

All premises, including all structures, holding facilities, conveyances, and materials, contaminated because of occupation or use by brucellosis reactor or exposed animals shall be properly cleaned and disinfected with a disinfectant permitted by APHIS in accordance with recommendations of the APHIS or State representative within 15 days from the date reactors were removed from the premises, except that the appropriate Veterinarian in Charge may extend the time limit for disinfection to 30 days when request for such extension is received by him prior to the expiration date of the original 15-day period allowed, and when he determines that such extension will not adversely affect the Brucellosis Eradication Program; and except further, that the Administrator may, upon request in specific cases, extend the time limit beyond the 30-day period when unusual and unforeseen circumstances occur, such as but not limited to floods, storms, or other Acts of God, which are beyond the control of the owner, preventing or hindering the disinfection of premises, conveyances, and materials. Certain premises may be exempted from such cleaning and disinfecting requirements by approval of the appropriate Veterinarian in Charge on written recommendations by the APHIS or State representative or when a written report by the APHIS or State representative determines that there are no buildings, holding facilities, conveyances, or other materials on the

premises that would require such cleaning and disinfection.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977. Redesignated at 46 FR 13674, Feb. 23, 1981, and 47 FR 53324, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991]

§ 51.9 Claims not allowed.

Claims for compensation for animals destroyed because of brucellosis shall not be allowed if any of the following circumstances exist:

(a) If the claimant has failed to comply with any of the requirements of this part.

(b) If the existence of brucellosis in the animal was determined based on the results of an official test, as defined in § 78.1 of this chapter, and specific instructions for the administration of the official test had not previously been issued to the individual performing the test by APHIS and the State animal health official.

(c) If all cattle, bison, and swine eligible for testing in the claimant's herd have not been tested for brucellosis under APHIS or State supervision.

(d) If the animals are:

(1) Barrows or gilts maintained for feeding purposes; or

(2) Spayed heifers or steers, unless the steers are work oxen, or unless the spayed heifers or steers are unweaned animals in a herd approved for depopulation in accordance with § 51.3 of this part.

(e) If the animals are classified as reactors and are unofficial vaccinates, unless there is either a record of a negative official test made not less than 30 days following the date of unofficial vaccination or unless other APHIS approved tests show the unofficial vaccinates are affected with virulent *Brucella*.

(f) If there is substantial evidence that the owner or his agent has in any way been responsible for any unlawful or improper attempt to obtain indemnity funds for such animal.

(g) If, at the time of test or condemnation, the animals belonged to or were upon the premises of any person to whom they had been sold for slaugh-

ter; shipped for slaughter, or delivered for slaughter.

(h) If any known brucellosis reactor animal remains in the herd, unless, in the opinion of the Veterinarian in Charge, a reasonable search has been made for the brucellosis reactor animal and the brucellosis reactor animal could not be found and removed.

(i) If the animals are brucellosis reactor animals which are slaughtered other than as part of a herd depopulation, and which are from a herd: (1) That was already classified as a "herd known to be affected" at the time the animals were identified as brucellosis reactor animals and (2) for which an approved action plan or approved individual herd plan (as defined in § 78.1 of this chapter) was not in effect at the time the claim was filed.

(Approved by the Office of Management and Budget under control number 0579-0047)

[42 FR 64336, Dec. 23, 1977. Redesignated at 46 FR 13674, Feb. 23, 1981, and 47 FR 53324, Nov. 26, 1982, and amended at 47 FR 53324, Nov. 26, 1982; 48 FR 57472, Dec. 30, 1983; 50 FR 11993, Mar. 27, 1985; 50 FR 47036, Nov. 14, 1985; 51 FR 11300, Apr. 2, 1986; 54 FR 32435, Aug. 8, 1989; 56 FR 18506, Apr. 23, 1991; 63 FR 47423, Sept. 8, 1998]

§ 51.10 Part 53 of this chapter not applicable.

No claim for indemnity for animals destroyed because of brucellosis shall hereafter be paid under the regulations contained in part 53 of this chapter, but all such claims shall be presented and paid pursuant to and in compliance with regulations contained in this part.

[42 FR 64336, Dec. 23, 1977. Redesignated at 46 FR 13674, Feb. 23, 1981, and 47 FR 53324, Nov. 26, 1982; 50 FR 11993, Mar. 27, 1985]

Subpart B—Indemnity for Sheep, Goats, and Horses

SOURCE: 69 FR 41912, July 13, 2004, unless otherwise noted.

§ 51.20 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this title to perform functions specified in parts 1, 2, 3, and 11 of subchapter A, and subchapters B, C, and D of this chapter, and to perform

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functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Affected herd/flock. Any herd or flock in which any cattle, bison, breeding swine, sheep, or goat has been classified as a brucellosis reactor and which has not been released from quarantine.

Animal. Sheep, goats, and horses.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

Appraisal. An estimate of the fair market value of an animal to be destroyed because of brucellosis.

Brucellosis exposed. Except for brucellosis reactors, animals that are part of a herd known to be affected, or are in a quarantined feedlot or a quarantined pasture, or are brucellosis suspects, or that have been in contact with a brucellosis reactor for a period of 24 hours or more, or for a period of less than 24 hours if the brucellosis reactor has aborted, calved, or farrowed within the past 30 days or has a vaginal or uterine discharge.

Brucellosis reactor animal. (1) Any sheep or goat that has been determined by a designated brucellosis epidemiologist¹ to be affected with brucellosis, based on test results, herd/flock history, and/or culture results. Any test used for cattle and bison under the APHIS official brucellosis eradication program (see part 78 of this chapter) may be used, but test results must be interpreted by a designated brucellosis epidemiologist.

(2) Any horse that has been determined by a designated brucellosis epidemiologist to be affected with brucellosis, based on epidemiological information or culture results, or positive

¹Requirements for designated brucellosis epidemiologists are contained in Veterinary Services Memorandum No. 551.10. A copy of this memorandum may be obtained from an APHIS representative, the State animal health official, or a State representative.

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results for brucellosis in accordance with one of the following tests:

Test	Positive results
Standard plate test (SPT)	If antibody titer positive at 1:100 dilution or higher.
Standard tube test (STT)	If antibody titer positive at 1:100 dilution or higher.
Rivanol test	If antibody titer positive at 1:50 dilution or higher.
Particle concentration fluorescence immunoassay (PCFIA).	If reading is 0.3 or lower.
Complement fixation test (CF)	If reading is 2+;20 dilution.

(3) Any cattle, bison, or swine classified as a brucellosis reactor as provided in the definition of official test in §78.1 of this chapter.

Condemn. The determination made by an APHIS representative, State representative, or accredited veterinarian that animals for which indemnity is sought under this subpart will be destroyed.

Designated brucellosis epidemiologist. An epidemiologist selected by the State animal health official and the Veterinarian in Charge to perform the functions required. The regional epidemiologist and the APHIS brucellosis staff must concur in the selection and appointment of the designated epidemiologist.

Destroyed. Condemned under State authority and slaughtered or otherwise dies.

Flock. Any group of sheep maintained on common ground for any purpose, or two or more groups of sheep under common ownership or supervision, geographically separated but which have an interchange or movement of animals without regard to health status.

Herd. Any group of goats, or mixed sheep and goats, maintained on common ground for any purpose, or two or more groups of goats, or two or more groups of mixed sheep and goats, under common ownership or supervision, geographically separated but which have an interchange or movement of animals without regard to health status.

Herd/flock depopulation. Removal by slaughter or other means of destruction of all sheep or goats in a flock or herd, or from a specific premises or under common ownership prior to restocking such premises with new animals.

Mortgage. Any mortgage, lien, or interest that is recorded under State law or identified in the indemnity claim form filed in accordance with this subpart, and held by any person other than the one claiming indemnity.

Official seal. A serially numbered metal strip consisting of a self-locking device on one end and a slot on the other end, which forms a loop when the ends are engaged and which cannot be reused if opened, and is applied by a representative of the Veterinarian in Charge or the State animal health official.

Owner. Any person who has legal or rightful title to sheep, goats, and horses, whether or not the animals are subject to a mortgage.

Permit. An official document for movement of animals under this subpart issued by an APHIS representative, State representative, or accredited veterinarian listing the disease status and identification of the animal, where consigned, cleaning and disinfecting requirements, and proof of slaughter certification.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company, or other legal entity.

Registered sheep and goats. Sheep and goats for which individual records of ancestry are recorded and maintained by a breed association whose purpose is the improvement of the species, and for which individual registration certificates are issued and recorded by such breed association.

State. Any State, the District of Columbia, Puerto Rico, the Virgin Islands of the United States, Guam, the Northern Mariana Islands, or any other territory or possession of the United States.

State representative. An individual employed in animal health activities by a State or a political subdivision thereof, and who is authorized by such State or political subdivision to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Veterinarian in Charge. The APHIS veterinary official who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State or area

concerned, or any person authorized to act for the Veterinarian in Charge.

§ 51.21 Cooperation with States.

The Administrator has been delegated the authority to cooperate with the proper State authorities in the eradication of brucellosis and to pay indemnities for the destruction of brucellosis-reactor animals or brucellosis-exposed animals.

§ 51.22 Payment to owners for goats, sheep, and horses destroyed.

(a) The Administrator may authorize the payment of Federal indemnity by the U.S. Department of Agriculture to any owner whose goats, sheep, or horses are destroyed after having been approved for destruction by APHIS.¹ Goats or sheep must be destroyed as part of a whole herd/flock depopulation to be eligible for Federal indemnity.

(b) The amount of Federal indemnity will be determined in accordance with the regulations in this part that were in effect on the date infected animals were found, or the date that the whole-herd/flock depopulation or destruction of individual animals was approved.

(c) Prior to payment of indemnity, proof of destruction must be furnished to the Veterinarian in Charge.

§ 51.23 Eligibility for indemnity.

Owners of animals destroyed because of brucellosis are eligible to receive Federal indemnity for their animals if the animals are:

(a) Sheep and goats in an affected herd or flock;

(b) Sheep and goats that were obtained from a herd or flock that was subsequently found to be an affected herd or flock. Epidemiological information such as test results, herd/flock history, and related evidence will be used to establish a probable date when the herd or flock was first affected with

¹The Administrator will authorize payment of Federal indemnity by the U.S. Department of Agriculture as provided in § 51.24: (a) As long as sufficient funds appropriated by Congress appear to be available for this purpose for the remainder of the fiscal year; (b) in States or areas not under Federal quarantine; (c) in States requesting payment of Federal indemnity; and (d) in States not requesting a lower rate.

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brucellosis. Animals removed from the herd or flock after that date will be considered exposed to the disease and eligible for indemnity; those removed before that date will not;

(c) Individual horses that have been found to be brucellosis reactor animals.

§51.24 Maximum per-head indemnity amounts.

Owners of the types of animals listed in §51.22 of this subpart are eligible to receive Federal indemnity for their animals. All animals must be individually appraised to determine their fair market value. The indemnity amount will be the appraised value minus the salvage value of the animal, up to a maximum of \$20,000 per animal in the case of horses. An independent appraiser selected by the Administrator will conduct appraisals. APHIS will pay the cost of appraisals.

§51.25 Proof of destruction.

The Veterinarian in Charge will accept any of the following documents as proof of destruction:

- (a) A postmortem report;
- (b) A meat inspection certification of slaughter;
- (c) A written statement by a State representative, APHIS representative, or accredited veterinarian attesting to the destruction of the animals;
- (d) A written, sworn statement by the owner or caretaker of the animal attesting to the destruction of the animals;
- (e) A permit (VS Form 1-27) consigning the animal from a farm or livestock market directly to a slaughter establishment; or
- (f) In unique situations where none of the documents listed above are available, other similarly reliable forms of proof of destruction.

(Approved by the Office of Management and Budget under control number 0579-0185)

§51.26 Record of tests.

An APHIS representative, State representative, or accredited veterinarian will compile, on an APHIS-approved form, a complete test record for each animal. The claimant must provide any information necessary to complete the form. The test record must include the type of test and the test results for

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each animal. It must also include the individual identification of each tested animal. Any unique, individually numbered identification is acceptable. The animal's owner and the appropriate State veterinarian's office will each receive a copy of the test record.

(Approved by the Office of Management and Budget under control number 0579-0185)

§51.27 Identification of goats, sheep, and horses to be destroyed.

The claimant must ensure that any goats, sheep, and horses for which indemnity is claimed are marked with unique, individually numbered identification showing they are to be destroyed. This must be done within 15 days after the animals are condemned. The Veterinarian in Charge may extend the time limit to 30 days when the Veterinarian in Charge receives a request for extension prior to the expiration date of the original 15-day period, and when the Veterinarian in Charge determines that the extension will not adversely affect the brucellosis eradication program. However, the Administrator may extend the time limit beyond 30 days when unusual or unforeseen circumstances occur that prevent or hinder the identification of the animal within 30 days, such as, but not limited to, floods, storms, or other Acts of God, which are beyond the control of the owner, or when identification is delayed due to requirements of another Federal agency.

(Approved by the Office of Management and Budget under control number 0579-0185)

§51.28 Moving goats, sheep, and horses to be destroyed.

Goats, sheep, and horses to be destroyed because of brucellosis must be accompanied by a permit and either:

- (a) Accompanied directly to slaughter by an APHIS or State representative; or
- (b) Moved in vehicles closed with official seals applied and removed by an APHIS representative, State representative, accredited veterinarian, or an individual authorized for this purpose by an APHIS representative. The official

seal numbers must be recorded on the accompanying permit.

(Approved by the Office of Management and Budget under control number 0579-0185)

§ 51.29 Destruction of animals; time limit.

(a) The claimant must ensure that goats, sheep, and horses infected with or exposed to *B. abortus* are either:

(1) Sold under permit to a recognized slaughtering establishment;

(2) Moved to an approved stockyard for sale to a recognized slaughtering establishment; or

(3) Destroyed and buried, incinerated, or rendered in accordance with applicable State law.

(b) The claimant must ensure that goats and sheep destroyed because of *B. melitensis* are destroyed and buried, incinerated, or rendered in accordance with applicable State law.

(c) Indemnity will be paid under this part only if the animals are destroyed within 15 days after the date they are marked with identification showing they are to be destroyed. However, the Veterinarian in Charge may extend the time limit to 30 days if:

(1) The animals' owner asks the Veterinarian in Charge for an extension before the initial 15-day period expires, or the animals were sold for slaughter before the original 15-day period expires; and

(2) The Veterinarian in Charge determines that extending the time limit will not adversely affect the Brucellosis Eradication Program.

(d) The Administrator may extend the time limit beyond 30 days when unusual and unforeseen circumstances occur that prevent or hinder the destruction of the animals within 30 days, such as, but not limited to, floods, storms, or other Acts of God, which are beyond the control of the owner, or when destruction is delayed due to requirements of another Federal agency.

(Approved by the Office of Management and Budget under control number 0579-0185)

§ 51.30 Claims for indemnity.

(a) Claims for indemnity for goats, sheep, and horses destroyed because of brucellosis must be made using an indemnity claim form furnished by

APHIS. On the form, the owner of the animals must certify whether the animals are subject to a mortgage. If the owner states there is a mortgage, the claim form must be signed by the owner and by each mortgage holder, consenting to the payment of any indemnity allowed to the owner. Payment will be made only if the claimant has submitted a complete indemnity claim form to the Veterinarian in Charge and the claim has been approved by the Veterinarian in Charge or by an APHIS representative designated by him or her. The Veterinarian in Charge or an APHIS representative designated by the Veterinarian in Charge will record on the APHIS indemnity claim form the amount of Federal and State indemnity payments that appear to be due to the owner of the animals. The owner of the animals will receive a copy of the completed APHIS indemnity claim form. The owner is responsible for paying all fees for holding the animals on the farm pending disposal and for all trucking fees.

(b) Claims for indemnity for registered sheep and registered goats must be accompanied by the animal's registration papers, issued in the name of the owner. If the registration papers are unavailable or if the animal is less than 1 year old and not registered at the time the claim for indemnity is submitted, the Veterinarian in Charge may grant a 60-day extension or the Administrator may grant an extension longer than 60 days for the presentation of registration papers. Any animal that is not registered but is eligible for registration at the time the claim is submitted will be considered unregistered unless the animal has been in the flock for less than 12 months.

(Approved by the Office of Management and Budget under control number 0579-0185)

§ 51.31 Disinfecting premises, conveyances, and materials.

All premises, including all structures, holding facilities, conveyances, and materials contaminated because they have been used by animals destroyed because of brucellosis, must be properly cleaned and disinfected in accordance with recommendations of the

APHIS or State representative. Cleaning and disinfecting must be completed within 15 days from the date the animals were removed from the premises, except that the Veterinarian in Charge may extend the time limit for disinfection to 30 days when he or she receives a request prior the expiration date of the original 15 days, and when the Veterinarian in Charge determines that an extension will not adversely affect the Brucellosis Eradication Program. The Administrator may extend the time limit beyond 30 days when unusual and unforeseen circumstances occur that prevent or hinder disinfection of the premises, conveyances, and materials within 30 days, such as, but not limited to floods, storms, or other Acts of God, which are beyond the control of the owner. A premises may be exempted from such cleaning and disinfecting requirements if the APHIS or State representative recommends it in writing and the Veterinarian in Charge approves.

(Approved by the Office of Management and Budget under control number 0579–0185)

§51.32 Claims not allowed.

Claims for indemnity for goats, sheep, and horses destroyed because of brucellosis will not be allowed if any of the following circumstances exist:

- (a) The claimant has failed to comply with any of the requirements of this part;
- (b) The claim is based on a brucellosis test, and the person who administered the test was not properly trained, authorized, or certified at the time of the test;
- (c) Testing of goats, sheep, and horses in the herd or flock for brucellosis was not done under APHIS or State supervision, or by an accredited veterinarian;
- (d) There is substantial evidence that the claim is an unlawful or improper attempt to obtain indemnity; or
- (e) If, at the time of test or condemnation, the animals belonged to or were upon the premises of any person to whom they had been sold for slaughter, shipped for slaughter, or delivered for slaughter.

§51.33 Multiple indemnity payments.

APHIS has indemnity programs for several other livestock diseases. However, if a claim is paid for indemnity for animals destroyed because of brucellosis, no other claims for indemnity will be paid for the same animals.

PART 52—SWINE DESTROYED BECAUSE OF PSEUDORABIES

Sec.

- 52.1 Definitions.
- 52.2 Payment of indemnity.
- 52.3 Appraisal of swine.
- 52.4 Presentation of claims.
- 52.5 Report of net salvage proceeds.
- 52.6 Claims not allowed.
- 52.7 Disinfection of premises, conveyances, and materials.

AUTHORITY: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 64 FR 2549, Jan. 15, 1999, unless otherwise noted.

§52.1 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with the provisions of part 161 of this chapter to perform functions specified in subchapters B, C, and D of this chapter.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS employee. Any individual employed by the Animal and Plant Health Inspection Service who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

Approved differential pseudorabies test. Any test for the diagnosis of pseudorabies that can distinguish vaccinated swine from infected swine; is produced under license from the Secretary of Agriculture under the Virus-Serum-Toxin Act of March 4, 1913, and subsequent amendments (21 U.S.C. 151 *et seq.*) with indications for use in the Cooperative State-Federal

Pseudorabies Eradication Program; and is conducted in a laboratory approved by the Administrator.¹

Department. The United States Department of Agriculture.

Herd. Any group of swine maintained on common ground for any purpose, or two or more groups of swine under common ownership or supervision that are geographically separated but that are determined by an official pseudorabies epidemiologist to have an interchange or movement of animals that could cause the transmission of pseudorabies from one group to another.

Inspector in charge. An APHIS employee who is designated by the Administrator to take charge of work in connection with the control and eradication of disease.

Known infected breeding sow. Any breeding sow that has been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test, or as diagnosed by an official pseudorabies epidemiologist as having pseudorabies.

Known infected herd. Any herd in which swine have been determined to be infected with pseudorabies based on an official pseudorabies test or an approved differential pseudorabies test,

or based on a diagnosis by an official pseudorabies epidemiologist.

Materials. Parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and articles stored in or adjacent to barns or other structures.

Mortgage. Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity.

Net salvage. The amount received for swine destroyed because of pseudorabies, after deducting freight, trucking, yardage, commission, slaughtering charges, and similar costs to the owner.

Official pseudorabies epidemiologist. A State or Federally employed veterinarian designated by the State animal health official and the veterinarian in charge to investigate and diagnose pseudorabies in livestock.

Official pseudorabies test. Any test for the diagnosis of pseudorabies approved by the Administrator and conducted in a laboratory approved by the Administrator. The following tests for the diagnosis of pseudorabies have been approved by the Administrator: Microtitration Serum-Virus Neutralization Test; Virus Isolation and Identification Test; Fluorescent Antibody Tissue Section Test; Enzyme-Linked Immunosorbent Assay (ELISA) Test, except for approved differential pseudorabies tests other than the glycoprotein I (gpl) ELISA test; Latex Agglutination Test (LAT); and Particle Concentration Fluorescence Immunoassay (PCFIA) Test. ² State, Federal, and university laboratories will be approved by the Administrator following his determination that the laboratory: has personnel trained at the Veterinary Services Diagnostic Laboratory at Ames, Iowa, assigned to supervise the test; follows standard test protocol; meets check test proficiency requirements; and will report

¹The names and addresses of laboratories approved by the Administrator to conduct approved differential pseudorabies tests are published in the Notices Section of the FEDERAL REGISTER. A list of approved laboratories is also available upon request from the Animal and Plant Health Inspection Service, 4700 River Road Unit 37, Riverdale, Maryland 20737-1231. State, Federal, and university laboratories will be approved by the Administrator when he or she determines that the laboratory: employs personnel trained at the National Veterinary Services Laboratories assigned to supervise the testing; follows standard test protocols; meets check test proficiency requirements; and will report all test results to State and Federal animal health officials. Before the Administrator may withdraw approval of any laboratory for failure to meet any of these conditions, the Administrator must give written notice of the proposed withdrawal to the director of the laboratory, and must give the director an opportunity to respond. If there are conflicts as to any material fact, a hearing will be held to resolve the conflict.

²Copies of the test protocols (Recommended Minimum Standards for Diagnostic Tests Employed in the Diagnosis of Pseudorabies (Aujeszky's Disease) are available upon request from the Animal and Plant Health Inspection Service, Veterinary Services, Operational Support, 4700 River Road Unit 33, Riverdale, MD 20737-1231.

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all test results to State and Federal animal health officials.³

Official seal. A serially numbered metal or plastic strip, consisting of a self-locking device on one end and a slot on the other end, that forms a loop when the ends are engaged and that cannot be reused if opened, or a serially numbered, self-locking button that can be used for this purpose.

Permit. An official document for movement of swine under this part that is issued by an APHIS employee, State representative, or accredited veterinarian and that lists the disease status and individual identification of the animal, where consigned, cleaning and disinfection requirements, and proof of slaughter certification by a recognized slaughtering establishment.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Pseudorabies. The contagious, infectious, and communicable disease of livestock and other animals, also known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.

Recognized slaughtering establishment. A slaughtering establishment operating under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) or a State meat inspection act.⁴

Secretary. The Secretary of Agriculture of the United States, or any officer or employee of the Department delegated to act in the Secretary's stead.

State. Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

³Before the Administrator withdraws the approval of any laboratory, the Director of the laboratory will be given a notice by the Administrator of the proposed disapproval and the reasons for it, and the Director will have the opportunity to respond. In those instances where there are conflicts as to the facts, a hearing will be held to resolve such conflicts.

⁴A list of recognized slaughtering establishments is available upon request from the Animal and Plant Health Inspection Service, 4700 River Road Unit 37, Riverdale, Maryland 20737–1231.

State representative. A person regularly employed in the animal health work of a State and who is authorized by that State to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Veterinarian in charge. The veterinary official of Veterinary Services, APHIS, who is assigned by the Administrator to supervise and perform official animal health work for APHIS in the State concerned.

[64 FR 2549, Jan. 15, 1999, as amended at 65 FR 20711, Apr. 18, 2000; 68 FR 6342, Feb. 7, 2003]

§ 52.2 Payment of indemnity.

(a) Except as provided in paragraph (b) of this section, the Administrator is authorized to agree on the part of the Department to pay indemnity to the owner of herds of swine destroyed because the herds are known to be infected with pseudorabies, or individual breeding sows destroyed because they are known to be infected with pseudorabies. The amount of indemnity paid, together with the amount for net salvage the owner receives when the animals are slaughtered, shall not exceed the fair market value of the swine. Such swine must be sent directly to slaughter under permit in a conveyance closed with an official seal applied and removed by either an APHIS employee, a State representative, an accredited veterinarian, or an individual authorized for this purpose by an APHIS employee. The swine must be sent to a recognized slaughtering establishment.

(b) If swine from herds that are destroyed because the herds are known to be infected with pseudorabies are not accepted at a recognized slaughtering establishment, or the owner and an APHIS employee or State representative agree they will not be accepted by a recognized slaughtering establishment, the Administrator is authorized to pay 100 percent of the expenses of the purchase, destruction, and disposition of such swine.

(Approved by the Office of Management and Budget under control number 0579–0151)

[65 FR 20711, Apr. 18, 2000]

§ 52.3 Appraisal of swine.

(a) Herds of swine and individual breeding sows to be destroyed because they are known to be infected with pseudorabies will be appraised by an APHIS employee and a representative of the State jointly, a representative of the State alone, or, if the State authorities approve, by an APHIS employee alone.

(b) The appraisal of swine will be based on the fair market value as determined by the meat or breeding value of the animals. Animals may be appraised in groups, provided that where appraisal is by the head, each animal in the group is the same value per head, and where appraisal is by the pound, each animal in the group is the same value per pound.

(c) Appraisals of swine must be reported on forms furnished by APHIS and signed by the owner of the swine. Reports of appraisals must show the number of swine and the value per head or the weight and value by pound.

(Approved by the Office of Management and Budget under control number 0579-0137)

[64 FR 2549, Jan. 15, 1999, as amended at 65 FR 20711, Apr. 18, 2000]

§ 52.4 Presentation of claims.

(a) When swine have been destroyed under § 52.2(a), any claim for indemnity must be presented, along with the report of net salvage proceeds required under § 52.5, to the veterinarian in charge on a form furnished by APHIS.

(b) When swine have been destroyed under § 52.2(b), any claim for indemnity must be presented, through the inspector in charge, to APHIS on a form furnished by APHIS.

(c) For all claims for indemnity, the owner of the swine must certify on the claim form that the swine covered are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, the owner and each person holding a mortgage on the swine must sign, consenting to the payment of indemnity to the person specified on the form.

(Approved by the Office of Management and Budget under control number 0579-0137)

[65 FR 20711, Apr. 18, 2000]

§ 52.5 Report of net salvage proceeds.

A report of the amount for net salvage derived from the sale of each animal for which a claim for indemnity is made under § 52.2(a) must be made on a salvage form that shows the gross receipts, expenses if any, and net proceeds. The original or a copy of the salvage form must be furnished by the owner to the veterinarian in charge.

(Approved by the Office of Management and Budget under control number 0579-0151)

[65 FR 20712, Apr. 18, 2000]

§ 52.6 Claims not allowed.

(a) The Department will not allow claims arising out of the destruction of swine unless the swine have been appraised as prescribed in this part and the owners have signed a written agreement to the appraisals.

(b) The Department will not allow claims arising out of the destruction of swine that have been moved or handled by the owner or a representative of the owner in violation of a law or regulation administered by the Secretary regarding animal disease, or in violation of a law or regulation for which the Secretary has entered into a cooperative agreement.

(Approved by the Office of Management and Budget under control number 0579-0137)

[64 FR 2549, Jan. 15, 1999. Redesignated at 65 FR 20711, Apr. 18, 2000]

§ 52.7 Disinfection of premises, conveyances, and materials.

All premises, including barns, stockyards and pens, and all cars and other conveyances, and the materials on any premises or conveyances used to house or transport swine for which indemnity is paid under this part must be cleaned and disinfected under the supervision of an APHIS employee after removal of the swine from the known infected herd. Premises may be restocked with swine 30 days following an approved cleaning and disinfection, unless an official pseudorabies epidemiologist determines that a shorter or longer period of time is adequate or necessary to protect new animals against infection. The owner to whom the indemnity is paid will be responsible for expenses incurred in connection with the cleaning

and disinfection, except for cleaning and disinfection of the conveyances used to transport the swine to the location of disposal.

[64 FR 13065, Mar. 17, 1999. Redesignated at 65 FR 20711, Apr. 18, 2000]

PART 53—FOOT-AND-MOUTH DISEASE, PLEUROPNEUMONIA, RINDERPEST, AND CERTAIN OTHER COMMUNICABLE DISEASES OF LIVESTOCK OR POULTRY

Sec.

- 53.1 Definitions.
- 53.2 Determination of existence of disease; agreements with States.
- 53.3 Appraisal of animals or materials.
- 53.4 Destruction of animals.
- 53.5 Disinfection or destruction of materials.
- 53.6 Disinfection of animals.
- 53.7 Disinfection of premises, conveyances, and materials.
- 53.8 Presentation of claims.
- 53.9 Mortgage against animals or materials.
- 53.10 Claims not allowed.

AUTHORITY: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

CROSS REFERENCE: For non-applicability of part 53 with respect to certain claims for indemnity, see §51.10 of this chapter.

§53.1 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in parts 1, 2, 3, and 11 of subchapter A of this chapter and subchapters B, C, and D of this chapter, and to perform functions required by cooperative State-Federal disease control and eradication programs.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service. The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS).

Animals. Livestock, poultry, and all other members of the animal kingdom, including birds whether domesticated or wild, but not including man.

APHIS employee. Any individual employed by the Animal and Plant Health Inspection Service who is authorized

by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

Bird. Any member of the class *aves* other than poultry.

Department. The United States Department of Agriculture.

Disease. Foot-and-mouth disease, rinderpest, contagious pleuropneumonia, exotic Newcastle disease, highly pathogenic avian influenza, infectious salmon anemia, spring viremia of carp, or any other communicable disease of livestock or poultry that in the opinion of the Secretary constitutes an emergency and threatens the livestock or poultry of the United States.

Exotic Newcastle Disease (END). Any velogenic Newcastle disease. Exotic Newcastle disease is an acute, rapidly spreading, and usually fatal viral disease of birds and poultry.

Highly pathogenic avian influenza. (1) Any influenza virus that kills at least 75 percent of eight 4- to 6-week-old susceptible chickens within 10 days following intravenous inoculation with 0.2 ml of a 1:10 dilution of a bacteria-free, infectious allantoic fluid;

(2) Any H5 or H7 virus that does not meet the criteria in paragraph (1) of this definition, but has an amino acid sequence at the hemagglutinin cleavage site that is compatible with highly pathogenic avian influenza viruses; or

(3) Any influenza virus that is not an H5 or H7 subtype and that kills one to five chickens and grows in cell culture in the absence of trypsin.

Inspector in charge. An APHIS employee who is designated by the Administrator to take charge of work in connection with the control and eradication of disease.

ISA Program veterinarian. The APHIS veterinarian assigned to manage the infectious salmon anemia program for APHIS in the State of Maine and who reports to the Area Veterinarian in Charge.

Materials. Parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and articles stored in or adjacent to barns or other structures.

Mortgage. Any mortgage, lien, or other security or beneficial interest

held by any person other than the one claiming indemnity.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Pet bird. Any bird that is kept for personal pleasure and is not for sale.

Poultry. Chickens, ducks, geese, swans, turkeys, pigeons, doves, pheasants, grouse, partridges, quail, guinea fowl, and pea fowl.

Secretary. The Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has been or may be delegated to act in the Secretary's stead.

State. Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

[61 FR 56882, Nov. 5, 1996, as amended at 67 FR 17610, Apr. 11, 2002; 69 FR 27827, May 17, 2004]

§ 53.2 Determination of existence of disease; agreements with States.

(a) The Administrator is hereby authorized to invite the proper State authorities to cooperate with the Department in the control and eradication of any disease within the meaning of § 53.1.

(b) Upon agreement of the authorities of the State to enforce quarantine restrictions and orders and directives properly issued in the control and eradication of such a disease, the Administrator is hereby authorized to agree, on the part of the Department, to cooperate with the State in the control and eradication of the disease, and, except as provided in § 53.11, to pay 50 percent (and in the case of exotic Newcastle disease or highly pathogenic avian influenza, up to 100 percent, and in the case of infectious salmon anemia, up to 60 percent) of the expenses of purchase, destruction and disposition of animals and materials required to be destroyed because of being contaminated by or exposed to such disease: *Provided, however,* That if the animals were exposed to such disease prior to or during interstate movement and are not eligible to receive indemnity

from any State, the Department may pay up to 100 percent of the purchase, destruction, and disposition of animals and materials required to be destroyed: *Provided, further,* That the cooperative program for the purchase, destruction, and disposition of birds shall be limited to birds which are identified in documentation pursuant to Cooperative Agreements,¹ as constituting a threat to the poultry industry of the United States: *And provided further,* That the Secretary may authorize other arrangements for the payment of such expenses upon finding that an extraordinary emergency exists.

[37 FR 5689, Mar. 18, 1972, as amended at 49 FR 3448, Jan. 27, 1984; 49 FR 26712, June 29, 1984; 61 FR 56883, Nov. 5, 1996; 67 FR 17610, Apr. 11, 2002; 67 FR 67095, Nov. 4, 2002]

§ 53.3 Appraisal of animals or materials.

(a) Animals affected by or exposed to disease, and materials required to be destroyed because of being contaminated by or exposed to disease shall be appraised by an APHIS employee and a representative of the State jointly, or, if the State authorities approve, by an APHIS employee alone.

(b) The appraisal of animals shall be based on the fair market value and shall be determined by the meat, egg production, dairy or breeding value of such animals. Animals may be appraised in groups providing they are the same species and type and providing that where appraisal is by the head each animal in the group is the same value per head or where appraisal is by the pound each animal in the group is the same value per pound.

(c) Appraisals of animals shall be reported on forms furnished by APHIS. Reports of appraisals shall show the number of animals of each species and the value per head or the weight and value by pound.

(d) Appraisals of materials shall be reported on forms furnished by APHIS. Reports of appraisals of materials shall, when practicable, show the number, size or quantity, unit price, and

¹ Agreements between the Departments and the particular State involved relating to cooperative animal (including poultry) disease prevention, control, and eradication.

§ 53.4

total value of each kind of material appraised.

[28 FR 5935, June 13, 1963, as amended at 35 FR 13981, Sept. 3, 1970; 36 FR 25217, Dec. 30, 1971; 56 FR 51974, Oct. 17, 1991; 68 FR 6343, Feb. 7, 2003]

§ 53.4 Destruction of animals.

(a) Except as provided in paragraph (b) of this section, animals infected with or exposed to disease shall be killed promptly after appraisal and disposed of by burial or burning, unless otherwise specifically provided by the Administrator, at his or her discretion. In the case of animals depopulated due to spring viremia of carp or infectious salmon anemia, salvageable fish may be sold for rendering, processing, or any other purpose approved by the Administrator. The proceeds gained from the sale of the fish will be subtracted from any payment from APHIS for which the producer or owner is eligible under § 53.2(b) or § 53.11.

(b) [Reserved]

(c) The killing of animals and the burial, burning, or other disposal of carcasses of animals pursuant to the regulations in this part shall be supervised by an APHIS employee who shall prepare and transmit to the Administrator a report identifying the animals and showing the disposition thereof.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991; 67 FR 67095, Nov. 4, 2002; 68 FR 42569, July 18, 2003; 69 FR 27827, May 17, 2004; 71 FR 56323, Sept. 26, 2006]

§ 53.5 Disinfection or destruction of materials.

(a) In order to prevent the spread of disease, materials contaminated by or exposed to disease shall be disinfected: *Provided, however,* That in all cases in which the cost of disinfection would exceed the value of the materials or disinfection would be impracticable for any reason, the materials shall be destroyed, after appraisal as provided in § 53.3.

(b) The disinfection or destruction of materials under this section shall be under the supervision of an APHIS employee who shall prepare and transmit to the Administrator a certificate identifying all materials which are de-

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stroyed, showing the disposition thereof.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

§ 53.6 Disinfection of animals.

Animals of species not susceptible to the disease for which a quarantine has been established, but which have been exposed to the disease, shall be disinfected when necessary by such methods as the Administrator shall prescribe from time to time.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

§ 53.7 Disinfection of premises, conveyances, and materials.

All premises, including barns, corals, stockyards and pens, and all cars, vessels, aircraft, and other conveyances, and the materials thereon, shall be cleaned and disinfected under supervision of an APHIS employee whenever necessary for the control and eradication of disease. Expenses incurred in connection with such cleaning and disinfection shall be shared according to the agreement reached under § 53.2 with the State in which the work is done. In the case of low pathogenic avian influenza related to the 2002 disease situations in Virginia and Texas associated with the H5 or H7 virus, premises may not be restocked with poultry until at least 7 days following such cleaning and disinfection, unless the Administrator determines that a shorter or longer period of time is adequate or necessary to protect new poultry against infection.

[68 FR 42569, July 18, 2003]

§ 53.8 Presentation of claims.

(a) Claims for the following must be presented to APHIS, through the inspector in charge, on a form approved by the Administrator:

- (1) Compensation for the value of animals;
- (2) The cost of burial, burning, or other disposition of animals;
- (3) The value of material destroyed; and
- (4) The expenses of destruction.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0579-0208)

[67 FR 67095, Nov. 4, 2002, as amended at 68 FR 42570, July 18, 2003; 71 FR 56323, Sept. 26, 2006]

§ 53.9 Mortgage against animals or materials.

When animals or materials have been destroyed pursuant to the requirements contained in this part, any claim for indemnity shall be presented on forms furnished by APHIS on which the owner of the animals or materials shall certify that the animals or materials covered thereby, are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, forms furnished by APHIS shall be signed by the owner and by each person holding a mortgage on the animals or materials, consenting to the payment of any indemnity allowed to the person specified thereon.

[28 FR 5935, June 13, 1963, as amended at 56 FR 51974, Oct. 17, 1991]

§ 53.10 Claims not allowed.

(a) The Department will not allow claims arising under the terms of this part if the payee has not complied with all quarantine requirements.

(b) Expenses for the care and feeding of animals held for destruction will not be paid by the Department, unless the payment of such expense is specifically authorized or approved by the Administrator.

(c) The Department will not allow claims arising out of the destruction of animals or materials unless they shall have been appraised as prescribed in this part and the owners thereof shall have executed a written agreement to the appraisals.

(d) The Department will not allow claims arising out of the destruction of animals or materials which have been moved or handled by the owner thereof or its officer, employee, or agent, acting within the scope of his or its office, employment or agency, in violation of a law or regulation administered by the Secretary for the prevention of the introduction into or the dissemination within the United States of any communicable disease of livestock or poultry

for which the animal or material was destroyed, or in violation of a law or regulation for the enforcement of which the Secretary enters or has entered into a cooperative agreement for the control and eradication of such disease.

(e) The Department will not allow claims arising out of the destruction of fish due to infectious salmon anemia (ISA) unless the claimants have agreed in writing to participate fully in the cooperative ISA control program administered by APHIS and the State of Maine. Participants in the ISA control program must:

(1) Establish and maintain a veterinary client-patient relationship with an APHIS accredited veterinarian and inform the ISA Program Veterinarian in writing of the name of their accredited veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in accredited veterinarians.

(2) Cooperate with and assist in periodic on-site disease surveillance, testing, and reporting activities for ISA, which will be conducted by their APHIS accredited veterinarian or a State or Federal official as directed by the ISA Program Veterinarian.

(3) Develop and implement biosecurity protocols for use at all participant-leased finfish sites and participant-operated vessels engaged in aquaculture operations throughout Maine. A copy of these protocols shall be submitted to the ISA Program Veterinarian at the time the participant enrolls in the ISA program and within 15 days of any change in the protocols.

(4) Develop, with the involvement of the participant's accredited veterinarian and the fish site health manager, a site-specific ISA action plan for the control and management of ISA. A copy of the action plan shall be submitted to APHIS for review at the time the participant enrolls in the ISA program and within 15 days of any change in the action plan.

(5) Participate in the State of Maine's integrated pest management (IPM) program for the control of sea lice on salmonids. A copy of the management plan developed by the participant for the State IPM program shall be submitted to APHIS for review at

the time the participant enrolls in the ISA program and within 15 days of any change in the management plan.

(6) Submit to the ISA Program Veterinarian at the time the participant enrolls in the ISA program a complete and current fish inventory information for each participant-leased finfish site with site and cage identifiers. Fish inventory information must include the numbers, age, date of saltwater transfer, vaccination status, and previous therapeutic history for all fish in each participant-leased finfish site.

(7) Maintain, and make available to the ISA Program Veterinarian upon request, mortality data for each participant-leased finfish site and pen in production.

(8) Cooperate with and assist APHIS in the completion of biosecurity audits at all participant-leased finfish sites and participant-operated vessels involved in salmonid aquaculture.

(f) The Department will not allow claims arising out of the destruction of fish due to spring viremia of carp (SVC) unless the claimants have done the following:

(1) Depopulated all SVC-infected and SVC-exposed fish on their property under the supervision of USDA or State officials;

(2) Thoroughly cleaned and disinfected all affected sites and all affected equipment under the supervision of USDA or State officials;

(3) If an affected site is to be restocked after cleaning and disinfection, the claimant must have done the following:

(i) Restocked with fish certified free of SVC by an APHIS-approved laboratory or in accordance with the diagnostic procedures described in the Office of International des Epizooties Manual of Diagnostic Tests For Aquatic Animals;

(ii) Demonstrated that their water sources are from first-use spring water, spring water without fish, well water, ozone or ultraviolet treated surface water, or bore-hole water and are free of wild carp and any other SVC-susceptible species; and

(iii) Prevented the migration of wild carp and any other wild SVC-suscep-

tible species into their farming establishment.

(Approved by the Office of Management and Budget under control number 0579-0192)

[28 FR 5935, June 13, 1963, as amended at 45 FR 86411, Dec. 31, 1980; 56 FR 51974; 67 FR 17611, Apr. 11, 2002; 69 FR 27827, May 17, 2004]

PART 54—CONTROL OF SCRAPIE

Sec.

54.1 Definitions.

54.2 Cooperative agreements and memoranda of understanding with States.

Subpart A—Scrapie Indemnification Program

54.3 Animals eligible for indemnity payments.

54.4 Application by owners for indemnity payments.

54.5 Certification by owners.

54.6 Amount of indemnity payments.

54.7 Procedures for destruction of animals.

54.8 Requirements for flock plans and post-exposure management and monitoring plans.

54.9 Waiver of requirements for scrapie control pilot projects.

54.10 Tests for scrapie.

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Subpart B—Scrapie Flock Certification Program

54.20 Administration.

54.21 Participation.

54.22 State scrapie certification boards.

AUTHORITY: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 66 FR 43982, Aug. 21, 2001, unless otherwise noted.

§ 54.1 Definitions.

Accredited veterinarian. A veterinarian approved by the Administrator in accordance with part 161 of this chapter to perform functions specified in subchapters B, C, and D of this chapter.

Administrator. The Administrator of the Animal and Plant Health Inspection Service or any employee of the United States Department of Agriculture authorized to act for the Administrator.

Animal. A sheep or goat.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant

Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS in animal health activities who is authorized by the Administrator to perform the function involved.

Approved laboratory. A laboratory approved by the Administrator in accordance with § 54.11 to conduct one or more scrapie tests, or genotype tests, on one or more tissues.

Approved test. A test for the diagnosis of scrapie approved by the Administrator for use in the scrapie eradication or certification program in accordance with § 54.10.

Area veterinarian in charge. The veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in the State concerned.

Breed association and registries. Organizations listed in § 151.9 of this chapter that maintain the permanent records of ancestry or pedigrees of animals (including the animal's sire and dam), individual identification of animals, and ownership of animals.

Certificate. An official document issued in accordance with § 79.5 of this chapter by an APHIS representative, State representative, or accredited veterinarian at the point of origin of an interstate movement of animals.

Commingle, commingled, commingling. Animals grouped together and having physical contact with each other, including contact through a fence, but not limited contacts. Commingling also includes sharing the same section in a transportation unit where there is physical contact.

Designated scrapie epidemiologist. An epidemiologist who has demonstrated the knowledge and ability to perform the functions required and who has been selected by the State animal health official and the area veterinarian in charge. The regional epidemiologist and the APHIS National Scrapie Program Coordinator must concur in the selection and appointment of the designated scrapie epidemiologist. The designated scrapie epidemiologist must satisfactorily complete training designated by APHIS.

Destroyed. (1) Euthanized by means other than slaughter, and the carcass disposed of, by means authorized by the Administrator; or

(2) In the case of exposed or high-risk animals that are not known to be infected, either euthanized or disposed of by slaughter; or

(3) Moved to a quarantined research facility if the movement has been approved by the Administrator.

Electronic implant. Any radio frequency identification implant device approved for use in the scrapie program by the Administrator. The Administrator will approve an electronic implant after determining that it is tamper resistant, not harmful to the animal, and readable by equipment available to APHIS and State representatives.

Exposed animal. (1) Any animal that has been in the same flock at the same time as a scrapie-positive female animal, excluding limited contacts; or

(2) Any animal born in a flock after a scrapie-positive animal was born into that flock or lambed in that flock, if born before that flock completes the requirements of a flock plan; or

(3) Any animal that was commingled with a scrapie-positive female animal during or up to 30 days after she lambed, kidded, or aborted, or while a visible vaginal discharge was present, or that was commingled with any other scrapie-positive female animal for 24 hours or more, including during activities such as shows and sales or while in marketing channels; or

(4) Any animal in a noncompliant flock.

Exposed flock. Any flock in which a scrapie-positive animal was born or lambed. Any flock that currently contains a female high-risk, exposed, or suspect animal, or that once contained a female high-risk, exposed, or suspect animal that lambed in the flock and from which tissues were not submitted for official testing and found negative. A flock that has completed a post-exposure management and monitoring plan following the exposure will no longer be an exposed flock.

Flock. All animals that are maintained on a single premises and all animals under common ownership or supervision on two or more premises with

animal interchange between the premises. Changes in ownership of part or all of a flock do not change the identity of the flock or the regulatory requirements applicable to the flock. Animals maintained temporarily on a premises for activities such as shows and sales or while in marketing channels are not a flock. More than one flock may be maintained on a single premises if:

(1) The flocks are enrolled as separate flocks in the SFCP; or

(2) A State or APHIS representative determines, based upon examination of flock records, that:

(i) There is no interchange of animals between the flocks;

(ii) The flocks never commingle and are kept at least 30 feet apart at all times or are separated by a solid wall through, over, or under which fluids cannot pass and through which contact cannot occur;

(iii) The flocks have separate flock records and identification;

(iv) The flocks have separate lambing facilities, including buildings and pastures, and a pasture or building used for lambing by one flock is not used by the other flock at any time; and

(v) The flocks do not share equipment without cleaning and disinfection in accordance with § 54.7(e). Additional guidance on acceptable means of cleaning and disinfection is also available in the Scrapie Flock Certification Program standards and the Scrapie Eradication Uniform Methods and Rules.

Flock of origin. The flock in which an animal most recently resided in which it either was born, gave birth, or was used for breeding purposes. The determination of an animal's flock of origin may be based either on the physical presence of the animal in the flock, the presence of official identification on the animal traceable to the flock, the presence of other identification on the animal that is listed on the bill of sale, or other evidence, such as registry records.

Flock plan. A written flock management agreement signed by the owner of a flock, the accredited veterinarian, if one is employed by the owner, and a State or APHIS representative in which each participant agrees to undertake actions specified in the flock

plan to control the spread of scrapie from, and eradicate scrapie in, an infected flock or source flock or to reduce the risk of the occurrence of scrapie in a flock that contains a high-risk or an exposed animal. As part of a flock plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the flock plan. The flock plan must include the requirements in § 54.8(a) through (f).

Flock sire. A sexually intact male animal that has ever been used for breeding in a flock.

High-risk animal. A sexually intact animal, excluding male sheep that have tested RR at codon 171 and AA at codon 136 using an official genotype test, that is:

(1) The progeny of a scrapie-positive dam; or

(2) Born in the same flock during the same lambing season as progeny of a scrapie-positive dam, unless the progeny of the scrapie-positive dam are from separate contemporary lambing groups; or

(3) Born in the same flock during the same lambing season that a scrapie-positive animal was born, or during any subsequent lambing season, if born before that flock completes the requirements of a flock plan; or

(4) An exposed female sheep that has not tested QR, HR, or RR at codon 171 using an official genotype test.

Infected flock. The flock of origin of a female animal that a State or APHIS representative has determined to be a scrapie-positive animal; or any flock in which a State or APHIS representative has determined that a scrapie-positive female animal has resided unless an epidemiologic investigation conducted by a State or APHIS representative shows that the animal did not lamb or abort in the flock. A flock will no longer be considered an infected flock after it has completed the requirements of a flock plan.

Limited contacts. Incidental contacts between animals from different flocks off the flock's premises such as at fairs, shows, exhibitions and sales; between ewes being inseminated, flushed, or implanted; or between rams at ram test or collection stations. Embryo transfer and artificial insemination equipment

and surgical tools must be sterilized between animals for these contacts to be considered limited contacts. Limited contacts do not include any contact, incidental or otherwise, with animals in the same flock or with a female animal during or up to 30 days after she lambbed, kidded or aborted or when there is any visible vaginal discharge. Limited contacts do not include any activity where uninhibited contact occurs, such as sharing an enclosure, sharing a section of a transport vehicle, or residing in other flocks for breeding or other purposes. Examples of limited contacts may be found in the Scrapie Flock Certification Program standards.

Live-animal screening test. Any test for the diagnosis of scrapie in a live animal that is approved by the Administrator as usually reliable but not definitive for diagnosing scrapie, and that is conducted in a laboratory approved by the Administrator.¹

Mortgage. Any mortgage, lien, or other security or interest held by any person other than the one claiming indemnity.

National Scrapie Database. A database designated by the Administrator in which APHIS and State animal health agencies cooperatively enter data concerning scrapie outbreaks, flocks and

premises affected by scrapie, individual animal identification and premises identification data, and other data to support the Scrapie Eradication Program and the Scrapie Flock Certification Program.

National Veterinary Services Laboratories (NVSL). The National Veterinary Services Laboratories, APHIS, U.S. Department of Agriculture, or an NVSL cooperating or contract laboratory.

Noncompliant flock. (1) Any source or infected flock whose owner declines to enter into a flock plan or post-exposure management and monitoring plan agreement within 30 days of being so designated, or whose owner is not in compliance with either agreement;

(2) Any exposed flock whose owner fails to make animals available for testing within 60 days of notification, or as mutually agreed, or whose owner fails to submit required postmortem samples;

(3) Any flock whose owner has misrepresented, or who employs a person who has misrepresented, the scrapie status of an animal or any other information on a certificate, permit, owner statement, or other official document within the last 5 years; or

(4) Any flock whose owner or manager has moved, or who employs a person who has moved, an animal in violation of this chapter within the last 5 years.

Official genotype test. Any test to determine the genotype of a live or dead animal that is conducted at either an approved laboratory or at the National Veterinary Services Laboratories, when the animal is officially identified and the samples used for the test are collected and shipped to the laboratory by either an accredited veterinarian or a State or APHIS representative

Official test. Any test for the diagnosis of scrapie in a live or dead animal that is approved by the Administrator for that use and conducted either at an approved laboratory or at the National Veterinary Services Laboratories.

Owner. A person, partnership, company, corporation, or any other legal entity who has legal or rightful title to animals, whether or not they are subject to a mortgage.

Post-exposure management and monitoring plan. A written agreement signed

¹The names and addresses of laboratories approved by the Administrator to conduct live-animal screening tests will be published in the Notices Section of the FEDERAL REGISTER. A list of approved laboratories is also available upon request from the Animal and Plant Health Inspection Service, Veterinary Services, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737-1235. State, Federal, and university laboratories will be approved by the Administrator when he or she determines that the laboratory: (a) Employs personnel trained by the National Veterinary Services Laboratories assigned to supervise the testing; (b) follows standard test protocols; (c) meets check test proficiency requirements; and (d) will report all test results to State and Federal animal health officials. Before the Administrator may withdraw approval of any laboratory for failure to meet any of these conditions, the Administrator must give written notice of the proposed withdrawal to the director of the laboratory and must give the director an opportunity to respond. If there are conflicts as to any material fact, a hearing will be held to resolve the conflicts.

by the owner of a flock, any accredited veterinarian employed by the owner, and a State or APHIS representative in which each participant agrees to undertake actions specified in the agreement to monitor for the occurrence of scrapie in the flock for at least 5 years after the last high-risk or scrapie-positive animal is removed from the flock or after the last exposure of the flock to a scrapie-positive animal, unless otherwise specified by a State or APHIS representative. As part of a post-exposure management and monitoring plan, the flock owner must provide the facilities and personnel needed to carry out the requirements of the plan. The plan must include the requirements in § 54.8.

Scrapie control pilot project. A pilot project authorized by the Administrator in writing, designed to test or improve program procedures or to facilitate research, in order to control and eradicate scrapie. In addition to APHIS, participants may include State animal health agencies, flock owners, and other parties as necessary.

Scrapie Eradication Program. The cooperative State-Federal program administered by APHIS and Consistent States to control and eradicate scrapie.

Scrapie Eradication Uniform Methods and Rules (UM&R). Cooperative procedures and standards adopted by APHIS and Consistent States for controlling and eradicating scrapie. The UM&R will be reviewed at least annually by representatives of the livestock industry and appropriate State and Federal agencies and the public and will be revised, and published as needed by APHIS.

Scrapie Flock Certification Program (SFCP). The cooperative Federal-State-industry voluntary program for the control of scrapie conducted in accordance with this subpart.

Scrapie Flock Certification Program standards. Cooperative procedures and standards adopted by APHIS and State scrapie certification boards for reducing the incidence and controlling the spread of scrapie through flock certification.²

²Individual copies of the Scrapie Flock Certification Program standards may be obtained on the World Wide Web at URL <http://www.aphis.usda.gov/vs/scrapie>.

Scrapie-positive animal. An animal for which a diagnosis of scrapie has been made by the National Veterinary Services Laboratories or another laboratory authorized by the Administrator to conduct scrapie tests in accordance with this part, through:

(1) Histopathological examination of central nervous system (CNS) tissues from the animal for characteristic microscopic lesions of scrapie;

(2) The use of proteinase-resistant protein analysis methods including but not limited to immunohistochemistry and/or western blotting on CNS and/or peripheral tissue samples from a live or a dead animal for which a given method has been approved by the Administrator for use on that tissue;

(3) Bioassay;

(4) Scrapie associated fibrils (SAF) detected by electron microscopy; or

(5) Any other test method approved by the Administrator in accordance with § 54.10.³

Separate contemporary lambing groups. To be a separate contemporary lambing group, the group must be maintained separately such that the animals cannot come into physical contact with other lambs, kids, ewes or

www.aphis.usda.gov/vs/scrapie, or from the Animal and Plant Health Inspection Service, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737-1235.

³The names and addresses of laboratories approved by the Administrator to conduct tests are published in the Notices Section of the FEDERAL REGISTER. A list of approved laboratories is also available upon request from the Animal and Plant Health Inspection Service, Veterinary Services, National Animal Health Programs Staff, 4700 River Road Unit 43, Riverdale, MD 20737-1235. State, Federal, and university laboratories will be approved by the Administrator when he or she determines that the laboratory: (a) Employs personnel trained by the National Veterinary Services Laboratories assigned to supervise the testing; (b) follows standard test protocols; (c) meets check test proficiency requirements; and (d) will report all test results to State and Federal animal health officials. Before the Administrator may withdraw approval of any laboratory for failure to meet any of these conditions, the Administrator must give written notice of the proposed withdrawal to the director of the laboratory and must give the director an opportunity to respond. If there are conflicts as to any material fact, a hearing will be held to resolve the conflict.

does or birth fluids or placenta from other ewes or does. This separate maintenance must preclude contact through a fence, during lambing and for 60 days following the date the last lamb or kid is born in a lambing season, and must preclude using the same lambing facility as other ewes or does, unless the lambing facility is cleaned and disinfected under supervision by an APHIS representative, State representative, or an accredited veterinarian between lambings in accordance with § 54.7(e). Additional guidance on acceptable means of cleaning and disinfection is also available in the Scrapie Flock Certification Program standards and the Scrapie Eradication Uniform Methods and Rules. The flock owner must maintain adequate records to document which animals were maintained in each contemporary lambing group and to document when cleaning and disinfection was performed and who supervised it.

Slaughter channels. Animals in slaughter channels include any animal that is sold, transferred, or moved either directly to a slaughter facility, to an individual for custom slaughter, or for feeding for the express purpose of improving the animals' condition for movement to slaughter. Any sexually intact animal that is commingled with breeding animals or that has been bred is not in slaughter channels. When selling animals for slaughter, owners should note on the bill of sale that the animals are sold only for slaughter.

Source flock. A flock in which a State or APHIS representative has determined that at least one animal was born that was diagnosed as a scrapie-positive animal at an age of 72 months or less. The determination that an animal was born in a flock will be based on such information as the presence of official identification on the animal traceable to the flock, the presence of other identification on the animal that is listed on the bill of sale, or other evidence, such as registry records, to show that a scrapie-positive animal was born in the flock, combined with the absence of records indicating that the animal was purchased from outside and added to the flock. If DNA from the animal was previously collected by an accredited veterinarian and stored at

an approved genotyping laboratory, or if DNA collection and storage are required for breed registration and the breed registration has appropriate safeguards in place to ensure the integrity of the banking process, the owner may request verification of the animal's identity based on DNA comparison if adequate records and identification have been maintained by the owner and the repository to show that the archived DNA is that of the animal that has been traced to the flock. The owner will be responsible for all costs for the DNA comparison. A flock will no longer be a source flock after it has completed the requirements of a flock plan.

State. Each of the 50 States, the District of Columbia, the Northern Mariana Islands, Puerto Rico, and all territories or possessions of the United States.

State representative. An individual employed in animal health activities by a State or a political subdivision of a State and who is authorized by the State or political subdivision to perform the function involved.

Suspect animal. An animal will be designated a suspect animal in accordance with § 79.4 of this chapter if it is:

(1) A sheep or goat that exhibits any of the following possible signs of scrapie and that has been determined to be suspicious for scrapie by an accredited veterinarian or a State or APHIS representative: Weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, or swaying of back end; increased sensitivity to noise and sudden movement; tremor, "star gazing," head pressing, recumbency, or other signs of neurological disease or chronic wasting.

(2) A sheep or goat that has tested positive for scrapie or for the proteinase resistant protein associated with scrapie on a live-animal screening test or any other test, unless the animal is designated a scrapie-positive animal.

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(3) A sheep or goat that has tested inconclusive or suggestive on an official test for scrapie.

Unofficial test. Any test for the diagnosis of scrapie or for the detection of the proteinase resistant protein associated with scrapie in a live or dead animal that either has not been approved by the Administrator or that was not conducted at an approved laboratory or at the National Veterinary Services Laboratories.

§ 54.2 Cooperative agreements and memoranda of understanding with States.

APHIS will execute cooperative agreements and/or memoranda of understanding with the animal health agency of any State in order to cooperatively administer the Scrapie Eradication Program and the Scrapie Flock Certification Program within that State. These agreements will describe the respective roles of APHIS and State personnel in implementing the Scrapie Eradication Program and the Scrapie Flock Certification Program. Each agreement may specify the financial, material, and personnel resources to be committed to these programs and other scrapie control measures by APHIS and the State; assign specific activities related to the control of scrapie within a State to APHIS or State personnel; establish schedules for APHIS representatives or State representatives to visit flocks; establish procedures for maintaining and sharing program records specified in this part, and specify other responsibilities of State representatives and APHIS representatives in support of the Scrapie Eradication Program and the Scrapie Flock Certification Program.

(Approved by the Office of Management and Budget under control number 0579–0101)

Subpart A—Scrapie Indemnification Program

§ 54.3 Animals eligible for indemnity payments.

(a) Indemnity may be paid for an animal only after the owner of the animal has applied for indemnification and been approved in accordance with § 54.4. Indemnity may be paid only for the following:

- (1) Destruction of high-risk animals;
- (2) Destruction of animals based on an epidemiologic investigation, when the Administrator determines that the destruction of these animals will contribute to the eradication of scrapie;
- (3) Destruction of live scrapie-positive animals;
- (4) Destruction of animals that test positive on a live-animal screening test; and
- (5) Destruction of suspect animals that are destroyed at the request of an APHIS representative.

(b) No indemnity will be paid for an animal if the owner of the animal fails to provide APHIS, within 30 days of request, animal registration certificates, sale and movement records, or other records requested in accordance with § 54.5. No indemnity will be paid until the premises, including all structures, holding facilities, conveyances, and materials contaminated because of occupation or use by the depopulated animals, have been properly cleaned and disinfected in accordance with § 54.7(e). Additional guidance on acceptable means of cleaning and disinfection is also available in the Scrapie Flock Certification Program standards and the Scrapie Eradication Uniform Methods and Rules. Premises or portions of premises may be exempted from the cleaning and disinfecting requirements if a designated scrapie epidemiologist determines, based on epidemiologic investigation, that cleaning and disinfection of such buildings, holding facilities, conveyances, or other materials on the premises will not significantly reduce the risk of the spread of scrapie, either because effective disinfection is not possible or because the normal operations on the premises prevent transmission of scrapie. No indemnity will be paid to an owner if the owner assembled or increased his flock for the purpose of collecting or increasing indemnity.

§ 54.4 Application by owners for indemnity payments.

(a) Normally, an application for indemnification will be initiated by a State or APHIS representative who is working with the owner of a flock that has already been determined to be an infected flock or source flock, or that

is already under a State movement restriction. In such cases, the flock owner will confirm information about the flock's eligibility for indemnity that is contained in the application submitted by the State or APHIS representative. However, the owner of any flock may apply directly to receive indemnification by submitting to the Administrator a written request containing the following information:

- (1) Name, address, and social security number of the flock owner;
- (2) Number and breed(s) of animals in the flock, including a current inventory;
- (3) Location of flock premises;
- (4) Reasons the owner believes animals in his or her flock may be eligible for indemnification, including any diagnosis of scrapie made for animals in the flock; any signs of scrapie observed in the flock by the owner; and any movement of animals into the flock from flocks infected with or exposed to scrapie;

(5) A copy of the registration papers issued in the name of the owner for any registered animals in the flock (registration papers are not required for the payment of indemnity for animals that are not registered). If the registration papers are unavailable, the owner may choose to accept a lesser indemnity in accordance with § 54.6(b)(2) or the area veterinarian in charge may grant a 60-day extension or the Administrator may grant an extension longer than 60 days for the presentation of registration papers; and

(6) Signed release letters addressed to any sheep or goat registry associations that maintain records of the owner's sheep or goats requesting the associations to release to APHIS all records maintained by the association on sheep or goats currently or formerly owned by the applicant.

(b) APHIS will evaluate each application to determine whether the owner's flock contains animals eligible for indemnity in accordance with § 54.3.

§ 54.5 Certification by owners.

Before any indemnity is paid to an owner, the owner must sign a written agreement with APHIS, certifying the following:

(a) The owner will make available for review upon request by a State or APHIS representative all bills of sale, pedigree registration certificates, and other records regarding movement of animals into and from the flock;

(b) If the owner maintains any flock after the payment of indemnity or acquires a new flock that is housed on the same premises within 5 years after the last high-risk or scrapie-positive animal is removed, the owner will maintain the flock in accordance with a post-exposure management and monitoring plan for 5 years;

(c) If the animal for which indemnity is paid is subject to any mortgage, the owner consents to the payment of the indemnity, up to the value of the mortgage, to the person(s) holding the mortgage;

(d) That the animal may be removed to a U.S. Department of Agriculture facility or a quarantined research facility, slaughtered, or euthanized and necropsied and tissues removed for diagnostic or other purposes.

§ 54.6 Amount of indemnity payments.

(a) Indemnity paid for sheep in accordance with § 54.3 will be set based on the following price reports published by the Agricultural Marketing Service (AMS). If pricing information is unavailable from these markets during a given week or month or if the numbers of animals sold are too low to give an accurate market value, the preceding week or month's value will be used. The AMS reports from the most recent week or month prior to the date APHIS offers to pay an owner indemnity shall be used to calculate the indemnity for that owner's sheep:

(1) The weekly weighted average Choice/Prime slaughter lamb price per pound at Greeley, CO;

(2) The weekly weighted average Utility slaughter ewe price per pound at San Angelo, TX;

(3) The monthly weighted average commercial western ewe lamb replacement price per head;

(4) The monthly weighted average commercial western yearling ewe replacement price per head;

(5) The monthly weighted average commercial western running age ewe price per head.

(6) The monthly weighted average commercial western aged ewe price per head.

(b) For animals under 1 year of age, the basic indemnity shall equal the price per pound from paragraph (a)(1) of this section times the greater of 50 lbs or the actual weight of the animal; except that, for ewe lambs under 1 year of age, the indemnity shall equal the per-head price from paragraph (a)(3) of this section if that price is higher. For sexually intact sheep 8 years of age or older and castrated animals 1 year of age or older, the basic indemnity shall equal the price per pound from paragraph (a)(2) of this section times 150, based on an average weight of 150 lbs. For sexually intact sheep at least 1 year of age and under 2 years of age, the indemnity shall equal the greater of the price per head from paragraph (a)(4) of this section, or the price per pound from paragraph (a)(2) of this section times 150, based on an average weight of 150 lbs. For sexually intact sheep at least 2 years of age and under 6 years of age, the basic indemnity shall equal the greater of the price per head from paragraph (a)(5) of this section or the price per pound from paragraph (a)(2) of this section times 150, based on an average weight of 150 lbs. For sexually intact sheep at least 6 years of age and under 8 years of age, the basic indemnity will equal the greater of the price per head from paragraph (a)(6) of this section or the price per pound from paragraph (a)(2) of this section times 150, based on an average weight of 150 lbs. A premium shall be added to the basic indemnity for each registered animal, equal to \$100 for each registered animal under 1 year of age, \$200 for each registered animal at least 1 year of age and under 4 years of age, and \$100 for each registered animal at least 4 years of age and under 8 years of age. An additional premium of \$50 will be added to the basic indemnity for each flock sire. The owner must provide adequate records to qualify for these premiums. When the animals to be indemnified are goats, or are sheep that fall outside the classes covered previously in this paragraph, the Administrator may take into consideration the producer's purchase records and sales records for the pre-

ceding 12 to 24 months in determining the indemnity amount, but the indemnity shall not exceed the maximum indemnity calculated for registered sheep in accordance with this section.

(1) If records and identification are inadequate to determine the actual age of animals, an APHIS or State representative will count all sexually intact animals that are apparently under 1 year of age, and those that are apparently at least 1 and under 2 years of age, based on examination of their teeth, and the indemnity for these animals will be calculated. The total number of these animals will be subtracted from the total number of sexually intact animals in the group to be indemnified, and indemnity for the remainder will be calculated based on the assumption that the remainder of the flock is 80 percent aged 2 to 6 years and 20 percent aged 6 to 8 years.

(2) Any animal that is not registered at the time indemnity is first offered, but is eligible to be registered, will receive the registered animal premium reduced by \$50.

(c) For animals destroyed by slaughter, the owner will retain the salvage value (the amount paid by a slaughter plant for the animal) of the animals in lieu of receiving the base indemnity. If the salvage value, less transport costs, is less than the base indemnity, APHIS will pay the owner the difference. APHIS will also indemnify the owner in the amount of any registered animal or flock sire premiums for which the animal qualifies.

(d) If the owner disagrees with the average weight estimate, he may have the sheep weighed at a public scale at his own expense, provided that the sheep may not come in contact with other sheep or goats during movement to the public scales, and will be paid based on the actual weight times the AMS weekly average price.

(e) Indemnity will be paid to an owner only for animals actually in a flock at the time indemnity is first offered. Animals removed from the flock as part of a post-exposure management and monitoring plan will be paid indemnity based on the AMS average prices at the time an APHIS representative designates the animals for removal.

§ 54.7 Procedures for destruction of animals.

(a) Scrapie-positive and suspect animals for which indemnification is sought must be destroyed on the premises where they are held, pastured, or penned at the time indemnity is approved or moved to an approved research facility, unless the APHIS representative involved approves in advance of destruction moving the animals to another location for destruction. Animals that are not scrapie-positive or suspect animals for which indemnification is sought may be:

(1) Slaughtered when moved in accordance with part 79 of this chapter and with the prior written approval of the APHIS representative involved;

(2) Destroyed on the premises where they are held, pastured, or penned at the time indemnity is approved;

(3) Moved to an approved research facility; or

(4) Moved to another location for destruction if an APHIS representative approves the movement in advance.

(b) The carcasses of animals destroyed in accordance with this section are authorized by the Administrator to be buried, incinerated, or disposed of by other methods in accordance with local, State, and Federal laws. The carcasses of scrapie-positive and suspect animals may not be processed for human or animal food.

(c) The destruction of animals and disposition of their carcasses in accordance with this part must be monitored by an APHIS representative who will prepare and transmit to the Administrator a report identifying the animals and showing their disposition.

(d) APHIS may pay the reasonable costs of disposal for scrapie-positive and suspect animals that are indemnified. To obtain reimbursement for disposal costs, animal owners must obtain written approval of the disposal costs from APHIS, prior to disposal. The Administrator may also authorize payment of up to half the reasonable disposal costs for animals that are eligible to be destroyed by slaughter under this section but for which slaughter is not a practical or cost efficient means of disposal; *Provided that*, APHIS may pay more than one-half of the expenses when the Administrator

determines that doing so will contribute to scrapie eradication. For reimbursement to be made, the owner of the animals must present the area veterinarian in charge with a copy of either a receipt for expenses paid or a bill for services rendered. Any bill for services rendered by the owner must not be greater than the normal fee for similar services provided by a commercial hauler or disposal facility.

(e) *Cleaning and disinfection of premises and equipment.* When required, cleaning and disinfection shall be conducted under the supervision of a State or APHIS representative as follows. Additional guidance on acceptable means of cleaning and disinfection is also available in the Scrapie Flock Certification Program standards and the Scrapie Eradication Uniform Methods and Rules:

(1) *Drylot areas.* When required, remove the manure and top 1-2 inches of soil to reduce contamination. Bury, till under, or compost the removed material in areas not accessed by domestic animals or wildlife.

(2) *Cement, wood, metal, and other non-earth surfaces, tools, equipment, instruments, feed, hay, bedding, and other materials.* Remove all organic material and compost or incinerate. Clean and wash all surfaces, tools, equipment, and instruments using hot water and detergent. Allow all surfaces, tools, equipment, and instruments to dry completely before disinfecting and sanitizing using the following methods:

(i) Incinerate items by high-temperature incineration methods;

(ii) Autoclave instruments, small tools, and other items at 136 °C for 1 hour;

(iii) To clean dry surfaces, apply a 2-percent chlorine bleach solution at room temperature (at least 18.3 °C for 1 hour, or apply a 1-molar solution of sodium hydroxide (approximately 5 oz. of sodium hydroxide dissolved in 1 gallon water) at room temperature for at least 1 hour. Note: A 2-molar solution is more effective than a 1-molar solution and should be used when circumstances permit.

§ 54.8 Requirements for flock plans and post-exposure management and monitoring plans.

(a) The owner of the flock or his or her agent must identify all animals 1 year of age or over within the flock. All animals less than 1 year of age must be identified when a change of ownership occurs, with the exception of those animals under 1 year of age moving within slaughter channels that must be identified in accordance with §§ 79.2 and 79.3 of this chapter. The form of identification must be an electronic implant, flank tattoo, ear tattoo, or tamper-resistant ear tag approved for this use by APHIS. In the case of goats, the form of identification may alternatively be a tail fold tattoo. The official identification must provide a unique identification number that is applied by the owner of the flock or his or her agent and must be linked to that flock in the National Scrapie Database.

(b) Upon request by a State or APHIS representative, the owner of the flock or his or her agent must have an accredited veterinarian collect tissues from animals for scrapie diagnostic purposes and submit them to a laboratory designated by a State or APHIS representative.

(c) Upon request by a State or APHIS representative, the owner of the flock or his or her agent must make animals in the flock and the records required to be kept as a part of these plans available for inspection.

(d) The owner of the flock or his or her agent must meet requirements found necessary by a State or APHIS representative to monitor for scrapie and to prevent the recurrence of scrapie in the flock and to prevent the spread of scrapie from the flock. These other requirements may include, but are not limited to: Utilization of a live-animal screening test; restrictions on the animals that may be moved from the flock; segregated lambing; cleaning and disinfection of lambing facilities; and/or education of the owner of the flock and personnel working with the flock in techniques to recognize clinical signs of scrapie and to control the spread of scrapie.

(e) The owner of the flock or his or her agent must immediately report the following animals to a State represent-

ative, APHIS representative, or an accredited veterinarian, and not remove them from a flock without written permission of a State or APHIS representative:

(1) Any sheep or goat exhibiting weight loss despite retention of appetite; behavioral abnormalities; pruritus (itching); wool pulling; biting at legs or side; lip smacking; motor abnormalities such as incoordination, high stepping gait of forelimbs, bunny hop movement of rear legs, swaying of back end; increased sensitivity to noise and sudden movement; tremor, “star gazing,” head pressing, recumbency, or other signs of neurological disease or chronic wasting illness; and

(2) Any sheep or goat in the flock that has tested positive for scrapie or for the proteinase resistant protein associated with scrapie on a live-animal screening test or any other test.

(f) Requirements for flock plans only.

(1) An epidemiologic investigation must be conducted to identify high-risk and exposed animals that currently reside in the flock or that previously resided in the flock, and all high-risk animals, scrapie-positive animals, and suspect animals must be removed from the flock. The animals must be removed either by movement to an approved research facility or by euthanization and disposal of the carcasses by burial, incineration, or other methods in accordance with local, State, and Federal laws, or, in the case of high-risk animals, by movement to slaughter in accordance with the provisions of part 79 of this chapter, or upon request in individual cases by another means determined by the Administrator to be sufficient to prevent the spread of scrapie;

(2) The premises of a flock under a flock plan must be cleaned and disinfected in accordance with § 54.7(e). Additional guidance on acceptable means of cleaning and disinfection is also available in the Scrapie Flock Certification Program standards and the Scrapie Eradication Uniform Methods and Rules. Premises or portions of premises may be exempted from the cleaning and disinfecting requirements if a designated scrapie epidemiologist

determines, based on epidemiologic investigation, that cleaning and disinfection of such buildings, holding facilities, conveyances, or other materials on the premises will not significantly reduce the risk of the spread of scrapie, either because effective disinfection is not possible or because the normal operations on the premises prevent transmission of scrapie. No area where a scrapie-positive animal lambled or aborted may be exempted;

(3) The owner of the flock, or his or her agent, must request breed associations and registries, livestock markets, and packers to disclose records to APHIS representatives or State representatives, to be used to identify source flocks and trace exposed animals, including high-risk animals; and

(4) The flock owner must agree to conduct post-exposure management and monitoring.

(g) *Requirements for post-exposure management and monitoring plans only:* The plan must require that a State or APHIS representative inspect the flock and flock records at least once every 12 months. The owner of the flock or his or her agent must maintain, and keep for a minimum of 5 years after an animal dies or is otherwise removed from a flock, the following records for each animal in the flock:

(1) Any identifying marks or tags present on the animal, including the animal's individual official identification number from its electronic implant, flank tattoo, ear tattoo, tamper resistant ear tag, or, in the case of goats, tail fold tattoo, and any secondary form of identification the owner of the flock may choose to maintain;

(2) Sex, year of birth, breed, and when possible to determine, the following: sire, dam, and offspring of the animal;

(3) Date of acquisition and previous flock, if the animal was not born in the flock; and

(4) Disposition of the animal, including the date and cause of death, if known, or date of removal from the flock and name and address of the person to whom the animal was transferred.

(h) *Modification of flock plans and post-exposure management and monitoring plans.*

A designated scrapie epidemiologist may modify the requirements of a flock plan or post-exposure management and monitoring plan to accommodate the situation of a particular flock if the modified plan requires:

(1) That a State or APHIS representative inspect the flock and flock records at least once every 12 months;

(2) The testing of animals at a level that will result in 99 percent confidence of detecting a 1 percent prevalence in the flock (for flock plans only);

(3) The official identification of all animals upon leaving the premises of the flock for purposes other than slaughter and of all animals over 18 months of age (as evidenced by the eruption of the second incisor) in slaughter channels; and

(4) Recordkeeping including:

(i) For acquired animals, the date of acquisition, name and address of the person from whom the animal was acquired, any identifying marks or tags present on the animal including the animal's individual official identification number from its electronic implant, flank tattoo, ear tattoo, tamper resistant ear tag, or, in the case of goats, tail fold tattoo, and any secondary form of identification the owner of the flock may choose to maintain.

(ii) For animals leaving the premises of the flock, the disposition of the animal, including, for those animals that are required to be identified, any identifying marks or tags present on the animal, including the animal's individual official identification number from its electronic implant, flank tattoo, ear tattoo, tamper resistant ear tag, or, in the case of goats, a tail fold tattoo, and any secondary form of identification the owner of the flock may choose to maintain, the date and cause of death, if known, or date of removal from the flock and name and address of the person to whom the animal was transferred.

(iii) Maintenance of these records for 5 years.

(5) Requirements equivalent to those contained in paragraphs (b), (c), (d), and (e) of this section.

(i) *Post-exposure management and monitoring plans for exposed flocks that were not source flocks and in which a scrapie infected animal did not lamb.* A designated scrapie epidemiologist shall determine the testing and monitoring requirements for these flocks based on the exposure risk of the individual flock.

§ 54.9 Waiver of requirements for scrapie control pilot projects.

The Administrator may waive the following requirements of this part for participants in a scrapie control pilot project by recording the requirements waived in the scrapie control pilot project plan:

(a) The determination that an animal is a high-risk animal, if the scrapie control pilot project plan contains testing or other procedures that indicate that an animal, despite meeting the definition of high-risk animal, is unlikely to spread scrapie; and

(b) The requirement that high-risk animals must be removed from a flock if the scrapie control pilot project plan contains alternative procedures to prevent the further spread of scrapie without removing high-risk animals from the flock.

§ 54.10 Tests for scrapie.

(a) The Administrator may approve new tests for the diagnosis of scrapie conducted on live or dead animals for use in the Scrapie Eradication Program. The Administrator will base the approval or disapproval of a test on the evaluation by APHIS and, when appropriate, outside scientists, of:

(1) A standardized test protocol that must include a description of the test, a description of the reagents, materials, and equipment used for the test, the test methodology, and any control or quality assurance procedures;

(2) Data to support reproducibility, that is, the ability to reproduce the same result repeatedly on a given sample;

(3) Data to support suitability, that is, data to show that similar results can be produced when the test is run at other laboratories;

(4) Data to support the sensitivity and specificity of the test; and

(5) Any other data requested by the Administrator to determine the suitability of the test for program use.

(b) To be approved, a scrapie test must be able to be replicated at the National Veterinary Services Laboratories, or another reliable, timely, and cost effective method of check testing must be available to APHIS.

(c) A test or combination of tests may be approved for the identification of suspect animals, for the identification of scrapie-positive animals, or for other purposes such as flock certification. For a test to be approved for the identification of scrapie-positive animals, the test must have a specificity comparable to the specificity of the currently approved tests. For a test to be approved as a live animal screening test for the identification of suspect animals, the test must be usually reliable but need not be definitive for diagnosing scrapie.

(d) Specific guidelines for use of approved scrapie tests within the Scrapie Eradication Program or Scrapie Flock Certification Program will be added to this part as tests are approved and will also be contained in the Scrapie Eradication UM&R and the Scrapie Flock Certification Program standards based on the characteristics of the test, including specificity, sensitivity, and predictive value.

(e) If an owner elects to have an unofficial test conducted on an animal for scrapie, or for the proteinase resistant protein associated with scrapie, and that animal tests positive to such a test, the animal will be designated a suspect animal, unless:

(1) The test was run as part of a bona fide research protocol designed to evaluate an unapproved test in which the owner is not informed of the test result; or

(2) The test protocol includes appropriate measures to prevent the spread of scrapie.

§ 54.11 Approval of laboratories to run official scrapie tests and official genotype tests.

(a) State, Federal, and university laboratories, or in the case of genotype tests, private laboratories will be approved by the Administrator when he or she determines that the laboratory:

(1) Employs personnel assigned to supervise the testing who are qualified to conduct the test based on education, training, and experience and who have been trained by the National Veterinary Services Laboratories (NVSL) or who have completed equivalent training approved by NVSL;

(2) Has adequate facilities and equipment to conduct the test;

(3) Follows standard test protocols;

(4) Meets check test proficiency requirements;

(5) Meets recordkeeping requirements;

(6) Will retain records, slides, blocks, and other specimens from all cases for at least 1 year and from positive cases for 5 years;

(7) Will allow APHIS to inspect the laboratory without notice during normal business hours; and

(8) Will report all test results to State and Federal animal health officials within agreed timeframes. An inspection may include, but is not limited to, review and copying of records, examination of slides, observation of the test being conducted, and interviewing of personnel.

(b) A laboratory may request approval to conduct one or more types of scrapie test or genotype test on one or more types of tissue. To be approved, a laboratory must meet the requirements in paragraph (a) of this section for each type of test and for each type of tissue for which they request approval.

(c) The Administrator may withdraw approval of any laboratory for failure to meet any of the conditions required by paragraph (a) of this section. The Administrator shall give written notice of the proposed withdrawal to the director of the laboratory and shall give the director an opportunity to respond. If there are conflicts as to any material fact concerning the reason for withdrawal, a hearing will be held to resolve the conflicts.

Subpart B—Scrapie Flock Certification Program

§ 54.20 Administration.

The Scrapie Flock Certification Program is a cooperative effort between APHIS; members of the sheep and goat

industry, including owners of flocks, slaughtering and rendering establishments, and breed associations and registries; accredited veterinarians; and State governments. APHIS coordinates with State scrapie certification boards and State animal health agencies to encourage flock owners to certify their flocks as free of scrapie by being in continuous compliance with the Scrapie Flock Certification Program standards.

§ 54.21 Participation.

Any owner of a sheep or goat flock may apply to enter the Scrapie Flock Certification Program by sending a written request to a State scrapie certification board or to the area veterinarian in charge. A notice containing a current list of flocks participating in the Scrapie Flock Certification Program, and the certification status of each flock, may be obtained from the APHIS web site at URL <http://www.aphis.usda.gov/vs/scrapie>. A list of noncompliant flocks may also be obtained from this site, and either list may be obtained by writing to the Animal and Plant Health Inspection Service, National Animal Health Programs Staff, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1235.

(Approved by the Office of Management and Budget under control number 0579-0101)

§ 54.22 State scrapie certification boards.

An area veterinarian in charge, after consulting with a State representative and industry representatives, may appoint a State scrapie certification board for the purpose of coordinating activities for the Scrapie Flock Certification Program, including making decisions to admit flocks to the Scrapie Flock Certification Program and to change flock status in accordance with the Scrapie Flock Certification Program standards. These boards are not appointed for the purpose of providing APHIS with consensus advice or policy recommendations. No more than one State scrapie certification board may be formed in each State. Each State scrapie certification board shall include as members the area veterinarian

in charge, one or more State representatives, one or more accredited veterinarians, when possible, and one or more owners of flocks, and, at the discretion of the area veterinarian in charge, may include other members.

PART 55—CONTROL OF CHRONIC WASTING DISEASE

Sec.

55.1 Definitions.

Subpart A—Chronic Wasting Disease Indemnification Program

- 55.2 Payment of indemnity.
- 55.3 Appraisal and destruction of captive cervids.
- 55.4 Disinfection of premises, conveyances, and materials.
- 55.5 Presentation of claims for indemnity.
- 55.6 Mortgage against animals.
- 55.7 Claims not allowed.
- 55.8 Official CWD tests and approval of laboratories to conduct official CWD tests.

Subpart B—Chronic Wasting Disease Herd Certification Program

- 55.21 Administration.
- 55.22 Participation and enrollment.
- 55.23 Responsibilities of States and enrolled herd owners.
- 55.24 Herd status.
- 55.25 Animal identification.

AUTHORITY: 21 U.S.C. 111–113, 114, 114a, 114a–1, 120, 121, 125, and 134b; 7 CFR 2.22, 2.80, and 371.4.

EFFECTIVE DATE NOTE: At 71 FR 41701, July 21, 2006, the authority citation for part 55 was revised, effective Oct. 19, 2006. At 71 FR 52983, Sept. 8, 2006, the effective date was delayed until further notice. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 7 U.S.C. 8301–8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 67 FR 5931, Feb. 8, 2002, unless otherwise noted.

§ 55.1, Note Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, delegated to act in the Administrator's stead.

Animal. Any captive cervid.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant

Health Inspection Service of the United States Department of Agriculture.

APHIS employee. Any individual employed by the Animal and Plant Health Inspection Service who is authorized by the Administrator to do any work or perform any duty in connection with the control and eradication of disease.

Captive. Animals that are privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined space. Animals that are held for research purposes are not included.

Cervid. All members of the family Cervidae and hybrids, including deer, elk, moose, caribou, reindeer, and related species.

Chronic wasting disease, CWD. A transmissible spongiform encephalopathy of cervids.

CWD exposed animal. An animal that is part of a CWD positive herd, or that was part of a herd within 5 years prior to that herd's designation as CWD positive, or an animal that has been housed with or been in direct contact with a positive animal, or an animal that has been on a contaminated premises.

CWD positive animal. An animal that has had a diagnosis of CWD confirmed by means of an official CWD test.

CWD positive herd. A herd in which a CWD positive animal resided at the time it was diagnosed and which has not been released from quarantine.

CWD suspect animal. An animal for which an APHIS employee has determined that laboratory evidence or clinical signs suggest a diagnosis of CWD.

Department. The United States Department of Agriculture.

Herd. A group of animals that are:

(1) Under common ownership or supervision and are grouped on one or more parts of any single premises (lot, farm, or ranch) or

(2) All animals under common ownership or supervision on two or more premises which are geographically separated but on which animals have been interchanged or had direct or indirect contact with one another.

Herd plan. A written herd management agreement developed by APHIS with input from the herd owner, State representatives, and other affected parties. A herd plan sets out the steps to be taken to eradicate CWD from a CWD

positive herd, or to prevent introduction of CWD into another herd. A herd plan will require: specified means of identification for each animal in the herd; regular examination of animals in the herd by a veterinarian for signs of disease; reporting to a State or APHIS representative of any signs of central nervous system disease in herd animals; maintaining records of the acquisition and disposition of all animals entering or leaving the herd, including the date of acquisition or removal, name and address of the person from whom the animal was acquired or to whom it was disposed, cause of death, if the animal died while in the herd. A herd plan may also contain additional requirements to prevent or control the possible spread of CWD, depending on the particular condition of the herd and its premises, including but not limited to: specifying the time for which a premises must not contain cervids after CWD positive, exposed, or suspect animals are removed from the premises; fencing requirements; depopulation or selective culling of animals; restrictions on sharing and movement of possibly contaminated livestock equipment; cleaning and disinfection requirements, or other requirements. APHIS may review and revise a herd plan at any time in response to changes in the situation of the herd or premises or improvements in understanding of the nature of CWD epidemiology or techniques to prevent its spread.

Materials. Parts of barns or other structures, straw, hay, and other feed for animals, farm products or equipment, clothing, and any other articles on the premises that have been in contact with captive cervids.

Mortgage. Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity.

Official appraiser (APHIS official appraiser, State official appraiser). A person authorized by APHIS (an APHIS official appraiser) or a State (a State official appraiser) to appraise animals for the purposes of this part. An official appraiser may be an APHIS employee, a State employee, or a professional livestock appraiser working under contract to APHIS or a State.

Official CWD test. Any test for the diagnosis of CWD approved by the Administrator and conducted in a laboratory approved by the Administrator in accordance with § 55.8 of this part.

Person. Any individual, corporation, company, association, firm, partnership, society, joint stock company, or other legal entity.

Secretary. The Secretary of Agriculture of the United States, or any officer or employee of the Department delegated to act in the Secretary's stead.

State. Each of the States of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

State representative. A person regularly employed in the animal health work of a State and who is authorized by that State to perform the function involved under a cooperative agreement with the United States Department of Agriculture.

Veterinarian in charge. The veterinary official of Veterinary Services, APHIS, who is assigned by the Administrator to supervise and perform official animal health work for APHIS in the State concerned.

§ 55.1 Note

EFFECTIVE DATE NOTE: At 71 FR 41701, July 21, 2006, § 55.1 was amended by removing the definition of *captive*; in the definition of *herd*, by removing the words "A group of animals" and adding in their place the words "One or more animals"; by revising the definitions of *animal*, *CWD-exposed animal*, *CWD-positive animal*, *CWD-suspect animal*, and *herd plan*; and by adding definitions for *animal identification*, *animal identification number (AIN)*, *Approved State CWD Herd Certification Program*, *commingled*, *commingling*, *CWD-exposed herd*, *CWD Herd Certification Program*, *CWD-source herd*, *CWD-suspect herd*, *deer*, *elk*, and *moose*, *farmed or captive*, *herd status*, *official animal identification*, *premises identification number (PIN)*, *trace back herd*, and *trace forward herd*, in alphabetical order, effective Oct. 19, 2006. At 71 FR 52983, Sept. 8, 2006, the effective date was delayed until further notice. For the convenience of the user, the revised and added text is set forth as follows:

§ 55.1 Definitions.

* * * * *

§ 55.1, Note

9 CFR Ch. I (1–1–07 Edition)

Animal. Any farmed or captive cervid.

* * * * *

Animal identification. A device or means of animal identification approved for use under this part by APHIS. Examples of animal identification devices that APHIS has approved are listed in § 55.25.

Animal identification number (AIN). A numbering system for the official identification of individual animals in the United States. The AIN contains 15 digits, with the first 3 being the country code (840 for the United States), the alpha characters USA, or the numeric code assigned to the manufacturer of the identification device by the International Committee on Animal Recording.

* * * * *

Approved State CWD Herd Certification Program. A program operated by a State government for certification of cervid herds with respect to CWD that the Administrator has determined to meet the requirements of § 55.23(a).

* * * * *

Commingled, commingling. Animals are commingled if they have direct contact with each other, have less than 10 feet of physical separation, or share equipment, pasture, or water sources/watershed. Animals are considered to have commingled if they have had such contact with a positive animal or contaminated premises within the last 5 years.

CWD-exposed animal. An animal that is part of a CWD-positive herd, or that has been exposed to a CWD-positive animal or contaminated premises within the previous 5 years.

CWD-exposed herd. A herd in which a CWD-positive animal has resided within 5 years prior to that animal's diagnosis as CWD-positive, as determined by an APHIS employee or State representative.

CWD Herd Certification Program. The Chronic Wasting Disease Herd Certification Program established by this part. This program includes both herds that are directly enrolled in the CWD Herd Certification Program and herds that are included based on their participation in Approved State CWD Herd Certification Programs.

CWD-positive animal. An animal that has had a diagnosis of CWD confirmed by means of two official CWD tests.

* * * * *

CWD-source herd. A herd that is identified through testing, tracebacks, and/or epidemiological evaluations to be the source of CWD-positive animals identified in other herds.

CWD-suspect animal. An animal for which an APHIS employee or State representative has determined that unofficial CWD test results, laboratory evidence or clinical signs suggest a diagnosis of CWD, but for which official laboratory results have been inconclusive or not yet conducted.

CWD-suspect herd. A herd for which unofficial CWD test results, laboratory evidence, or clinical signs suggest a diagnosis of CWD, as determined by an APHIS employee or State representative, but for which official laboratory results have been inconclusive or not yet conducted.

Deer, elk, and moose. All animals in the genera *Odocoileus*, *Cervus*, and *Alces* and their hybrids.

* * * * *

Farmed or captive. Privately or publicly maintained or held for economic or other purposes within a perimeter fence or confined area, or captured from a free-ranging population for interstate movement and release.

* * * * *

Herd plan. A written herd and/or premises management agreement developed by APHIS in collaboration with the herd owner, State representatives, and other affected parties. The herd plan will not be valid until it has been reviewed and signed by the Administrator, the State representative, and the herd owner. A herd plan sets out the steps to be taken to eradicate CWD from a CWD-positive herd, to control the risk of CWD in a CWD-exposed or CWD-suspect herd, or to prevent introduction of CWD into that herd or any other herd. A herd plan will require specified means of identification for each animal in the herd; regular examination of animals in the herd by a veterinarian for clinical signs of disease; reporting to a State or APHIS representative of any clinical signs of a central nervous system disease or chronic wasting condition in the herd; maintaining records of the acquisition and disposition of all animals entering or leaving the herd, including the date of acquisition or removal, name and address of the person from whom the animal was acquired or to whom it was disposed; and the cause of death, if the animal died while in the herd. A herd plan may also contain additional requirements to prevent or control the possible spread of CWD, depending on the particular circumstances of the herd and its premises, including but not limited to depopulation of the herd, specifying the time for which a premises must not contain cervids after CWD-positive, -exposed, or -suspect animals are removed from the premises; fencing requirements; selective culling of animals; restrictions on sharing and movement of possibly contaminated

livestock equipment; premises cleaning and disinfection requirements; or other requirements. A herd plan may be reviewed and changes to it suggested at any time by any party signatory to it, in response to changes in the situation of the herd or premises or improvements in understanding of the nature of CWD epidemiology or techniques to prevent its spread. The revised herd plan will become effective after it is reviewed by the Administrator and signed by the Administrator, the State representative, and the herd owner.

Herd status. The status of a herd assigned under the CWD Herd Certification Program in accordance with § 55.24, indicating a herd's relative risk for CWD. Herd status is based on the number of years of monitoring without evidence of the disease and any specific determinations that the herd has contained or has been exposed to a CWD-positive, -exposed or -suspect animal.

* * * * *

Official animal identification. A device or means of animal identification approved for use under this part by APHIS to uniquely identify individual animals. Examples of approved official animal identification devices are listed in § 55.25. The official animal identification must include a nationally unique animal identification number that adheres to one of the following numbering systems:

- (1) National Uniform Eartagging System.
- (2) Animal identification number (AIN).
- (3) Premises-based number system. The premises-based number system combines an official premises identification number (PIN), as defined in this section, with a producer's livestock production numbering system to provide a unique identification number. The PIN and the production number must both appear on the official tag.
- (4) Any other numbering system approved by the Administrator for the identification of animals in commerce.

* * * * *

Premises identification number (PIN). A unique number assigned by a State or Federal animal health authority to a premises that is, in the judgment of the State or Federal animal health authority, a geographically distinct location from other livestock production units. The premises identification number is associated with an address or legal land description and may be used in conjunction with a producer's own livestock production numbering system to provide a unique identification number for an animal. The premises identification number may consist of:

- (1) The State's two-letter postal abbreviation followed by the premises' assigned number; or

- (2) A seven-character alphanumeric code, with the right-most character being a check digit. The check digit number is based upon the ISO 7064 Mod 36/37 check digit algorithm.

* * * * *

Trace back herd. A herd in which a CWD-positive animal formerly resided.

Trace forward herd. A herd that has received exposed animals from a CWD-positive herd within 5 years prior to the diagnosis of CWD in the positive herd or from the identified date of entry of CWD into the positive herd.

* * * * *

Subpart A—Chronic Wasting Disease Indemnification Program

§ 55.2 Payment of indemnity.

The Administrator is authorized to pay for the purchase and destruction of CWD positive animals, CWD exposed animals, and CWD suspect animals. Subject to available funding, the amount of the Federal payment for any such animals will be 95 percent of the appraised value established in accordance with § 55.3 of this part, but the Federal payment shall not exceed \$3,000 per animal. If a non-Federal source makes a payment for an animal for which a Federal indemnity is paid, and the non-Federal payment exceeds 5 percent of the appraised value established in accordance with § 55.3 of this part, the amount of the Federal payment for any such animals will be reduced by the amount by which the non-Federal payment exceeds 5 percent of the appraised value. The Administrator is also authorized to reimburse State governments or State animal health agencies for payments they make for the purchase and destruction, on or after October 1, 2001, of CWD positive animals, CWD exposed animals, and CWD suspect animals, and for State expenditures for associated carcass disposal and cleaning and disinfection costs resulting from such purchase and destruction, in accordance with cooperative agreements signed by the Administrator and the duly authorized agent of the State.

§ 55.3 Appraisal and destruction of captive cervids.

(a) CWD positive herds, or individual CWD suspect animals or exposed animals removed by APHIS from a herd for testing, will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree, by either a State official appraiser or an APHIS official appraiser alone.

(b) The appraisal of cervids will be the fair market value as determined by the meat or breeding value of the animals. Animals may be appraised in groups, provided that where appraisal is by the head, each animal in the group is the same value per head, and where appraisal is by the pound, each animal in the group is the same value per pound.

(c) Appraisals of cervids must be reported on forms furnished by APHIS and signed by the appraisers, and signed by the owner of the cervids to indicate agreement with the appraisal amount. Reports of appraisals must show the number of cervids and the value per head or the weight and value by pound.

(d) In accordance with instructions from an APHIS employee, cervids for which indemnification is sought must be:

(1) Destroyed on the premises where they are held, pastured, or penned at the time indemnity is approved;

(2) Moved to another location for destruction under conditions specified by the APHIS employee; or

(3) Moved to an approved research facility under conditions specified by the APHIS employee.

(e) The carcasses of any cervids destroyed in accordance with this part are authorized by the Administrator to be incinerated, destroyed in an alkaline hydrolysis tissue digester, or disposed of by any other method authorized by an APHIS employee and in accordance with local, State, and Federal laws. APHIS will pay the reasonable costs of destruction and carcass disposal for animals that are indemnified. To obtain reimbursement for disposal costs, animal owners must obtain written approval of the disposal costs from APHIS, prior to disposal. Except in cases where APHIS or a State directly

arranges for disposal, the owner of the animals must present an APHIS employee with a written contract or estimate of disposal costs. Prior to receiving reimbursement, the owner must also present an APHIS employee with a copy of either a receipt for expenses paid by the owner or a bill for services rendered to the owner. Any bill for services rendered presented by the owner must not be greater than the normal fee for similar services provided by commercial entities. The carcasses of cervids destroyed in accordance with this section may not be sold to be processed for human or animal food, including dietary supplements.

(Approved by the Office of Management and Budget under control number 0579–0189)

§ 55.4 Disinfection of premises, conveyances, and materials.

After cervids are destroyed in accordance with this part, all premises, including barns, stockyards and pens, all cars and other conveyances, and all other materials on any premises or conveyances used to house or transport such cervids must be cleaned and disinfected under the supervision of an APHIS employee or a State representative, using methods specified by the APHIS employee or a State representative. Premises may not be restocked with cervids until after the date specified in the herd plan required by § 55.7(b) of this part. The owner to whom the indemnity is paid will be responsible for expenses incurred in connection with the cleaning and disinfection, except that APHIS or a State will pay for cleaning and disinfection of the conveyances used to transport the cervids to the location of disposal. However, APHIS may also decide to pay the cost of cleaning and disinfecting premises when the procedures needed to conduct effective cleaning and disinfection are unusually extensive and require methods that are not normally available on a premises. For example, normal procedures would include washing surfaces with high-pressure hoses and disinfectants and burying or burning contaminated materials. Unusually extensive procedures would include disposing of contaminated materials by digestive disposal or high-temperature incineration.

§ 55.5 Presentation of claims for indemnity.

Claims for indemnity for the value of animals destroyed must be documented on a form furnished by APHIS and presented to an APHIS employee or a State representative authorized to accept the claims.

(Approved by the Office of Management and Budget under control number 0579-0189)

§ 55.6 Mortgage against animals.

When cervids have been destroyed under this part, any claim for indemnity must be presented on forms furnished by APHIS. The owner of the cervids must certify on the forms that the cervids covered are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, the owner and each person holding a mortgage on the cervids must sign, consenting to the payment of indemnity to the person specified on the form.

(Approved by the Office of Management and Budget under control number 0579-0189)

§ 55.7 Claims not allowed.

(a) The Department will not allow claims arising out of the destruction of cervids unless the cervids have been appraised as prescribed in this part and the owners have signed the appraisal form indicating agreement with the appraisal amount as required by § 55.3(c) of this part.

(b) The Department will not allow claims arising out of the destruction of cervids unless the owners have signed a written agreement with APHIS in which they agree that if they maintain cervids in the future on the premises used for cervids for which indemnity is paid, they will maintain the cervids in accordance with a herd plan and will not introduce cervids onto the premises until after the date specified in that herd plan. Persons who violate this written agreement may be subject to civil and criminal penalties.

(c) The Department will not allow claims arising out of the destruction of cervids that have been moved or handled by the owner or a representative of the owner in violation of a law or regulation administered by the Secretary regarding animal disease, or in

violation of a law or regulation for which the Secretary has entered into a cooperative agreement.

(Approved by the Office of Management and Budget under control number 0579-0189)

§ 55.8 Official CWD tests and approval of laboratories to conduct official CWD tests.

(a) An official CWD test is:

(1) Histopathological examination of central nervous system (CNS) tissues from the animal for characteristic microscopic lesions of CWD, using test protocols provided by the National Veterinary Services Laboratories (NVSL);

(2) The use of proteinase-resistant protein analysis methods including but not limited to immunohistochemistry and/or western blotting on CNS and/or peripheral tissue samples from a live or a dead animal, using test protocols provided by NVSL; or

(3) Any other test method approved by the Administrator in accordance with this section.

(b) The Administrator may approve new tests for the diagnosis of CWD conducted on live or dead animals, and will base the approval or disapproval of a test on the evaluation by APHIS and, when appropriate, outside scientists, of:

(1) A standardized test protocol that must include a description of the test, a description of the reagents, materials, and equipment used for the test, the test methodology, and any control or quality assurance procedures;

(2) Data to support reproducibility, that is, the ability to reproduce the same result repeatedly on a given sample;

(3) Data to support suitability, that is, data to show that similar results can be produced when the test is run at other laboratories;

(4) Data to support the sensitivity and specificity of the test; and

(5) Any other data requested by the Administrator to determine the suitability of the test for program use.

(c) Specific protocols for official CWD tests are available upon request to NVSL.

(d) State, Federal, and university laboratories will be approved by the Administrator to conduct official CWD

tests when he or she determines that the laboratory:

(1) Employs personnel assigned to supervise the testing who are qualified to conduct the test based on education, training, and experience and who have been trained by NVSL or who have completed equivalent training approved by NVSL;

(2) Has adequate facilities and equipment to conduct the test;

(3) Follows standard test protocols;

(4) Meets check test proficiency requirements;

(5) Meets recordkeeping requirements;

(6) Will retain records, slides, blocks, and other specimens from all cases for at least 1 year and from positive cases for 5 years;

(7) Will allow APHIS to inspect¹ the laboratory without notice during normal business hours; and

(8) Will report all test results to State and Federal animal health officials within agreed timeframes.

(e) The Administrator may withdraw approval of any laboratory for failure to meet any of the conditions required by paragraph (d) of this section. The Administrator shall give written notice of the proposed withdrawal to the director of the laboratory and shall give the director an opportunity to respond. If there are conflicts as to any material fact concerning the reason for withdrawal, a hearing will be held to resolve the conflicts. The hearing will be conducted in accordance with rules of practice that will be adopted by the Administrator for the proceeding.

Subpart B—Chronic Wasting Disease Herd Certification Program

SOURCE: 71 FR 41702, July 21, 2006, unless otherwise noted.

EFFECTIVE DATE NOTE: At 71 FR 41702, July 21, 2006, subpart B was added to part 55, effective Oct. 19, 2006. At 71 FR 52983, Sept. 8, 2006, the effective date was delayed until further notice.

¹ An inspection may include, but is not limited to, review and copying of records, examination of slides, observation of the test being conducted, and interviewing of personnel.

§ 55.21 Administration.

The CWD Herd Certification Program is a cooperative effort between APHIS, State animal health and wildlife agencies, and deer, elk, and moose owners. APHIS coordinates with these State agencies to encourage deer, elk, and moose owners to certify their herds as low risk for CWD by being in continuous compliance with the CWD Herd Certification Program standards.

§ 55.22 Participation and enrollment.

(a) *Participation by owners.* Any owner of a farmed or captive deer, elk, or moose herd may apply to enroll in the CWD Herd Certification Program by sending a written request to the appropriate State agency, or to the veterinarian in charge if no Approved State CWD Herd Certification Program exists in the herd's State. APHIS or the State will determine the herd's eligibility, and if needed will require the owner to submit more details about the herd animals and operations. An application for participation may be denied if APHIS or the State determines that the applicant has previously violated State or Federal laws or regulations for livestock, and that the nature of the violation indicates that the applicant may not faithfully comply with the requirements of the CWD Herd Certification Program. If the enrolling herd is a CWD-positive herd or CWD-exposed herd, immediately after enrollment it must begin complying with a herd plan developed in accordance with § 55.24. After determining that the herd is eligible to participate in accordance with this paragraph, APHIS or the appropriate State agency will send the herd owner a notice of enrollment that includes the herd's enrollment date. Inquiries regarding which herds are participating in the CWD Herd Certification Program and their certification should be directed to the State representative of the relevant State.

(1) *Enrollment date.* With the exceptions listed in this paragraph, the enrollment date for any herd that joins the CWD Herd Certification Program after the effective date of this rule will be the date the herd is approved for participation.

(i) For herds already participating in State CWD programs, the enrollment

date will be the first day that the herd participated in a State program that APHIS subsequently determines qualifies as an Approved State CWD Herd Certification Program in accordance with § 55.23(a) of this part. This type of constructed enrollment date will be unavailable for herds that apply to enroll after October 19, 2007, and herds that apply to enroll after that date will have an enrollment date of the date APHIS approves the herd participation.

(ii) For herds that enroll directly in the Federal CWD Herd Certification Program, which is allowed only when there is no Approved State CWD Herd Certification Program in their State, the enrollment date will be the earlier of:

(A) The date APHIS approves enrollment; or

(B) If APHIS determines that the herd owner has maintained the herd in a manner that substantially meets the conditions specified in § 55.23(b) for herd owners, the first day that the herd participated in such a program. However, in such cases the enrollment date may not be set at a date more than 2 years prior to the date that APHIS approved enrollment of the herd. This type of constructed enrollment date will be unavailable for herds that apply to enroll after October 19, 2007, and herds that apply to enroll after that date will have an enrollment date of the date APHIS approves the herd participation.

(iii) For new herds that were formed from and contain only animals from herds enrolled in the CWD Herd Certification Program, the enrollment date will be the latest enrollment date for any source herd for the animals.

(2) *[Reserved]*

(b) *Participation by States.* Any State that operates a State program to certify the CWD status of deer, elk, or moose may request the Administrator to designate the State program as an Approved State CWD Herd Certification Program. The Administrator will approve or disapprove a State program in accordance with § 55.23(a) of this subpart. In States with an Approved State CWD Herd Certification Program, program activities will be conducted in accordance with the guidelines of that program as long as

the State program meets the minimum requirements of this part. A list of Approved State CWD Herd Certification Programs may be obtained by writing to the National Center for Animal Health Program, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737-1235.

(Approved by the Office of Management and Budget under control number 0579-0237)

§ 55.23 Responsibilities of States and enrolled herd owners.

(a) *Approval of State programs and responsibilities of States.* In reviewing a State program's eligibility to be designated an Approved State CWD Herd Certification Program, the Administrator will evaluate a written statement from the State that describes State CWD control and deer, elk, and moose herd certification activities and that cites relevant State statutes, regulations, and directives pertaining to animal health activities and reports and publications of the State. In determining whether the State program qualifies, the Administrator will determine whether the State:

(1) Has the authority, based on State law or regulation, to restrict the intra-state movement of all CWD-positive, CWD-suspect, and CWD-exposed animals.

(2) Has the authority, based on State law or regulation, to require the prompt reporting of any animal suspected of having CWD and test results for any animals tested for CWD to State or Federal animal health authorities.

(3) Has, in cooperation with APHIS personnel, drafted and signed a memorandum of understanding with APHIS that delineates the respective roles of the State and APHIS in CWD Herd Certification Program implementation.

(4) Has placed all known CWD-positive, CWD-exposed, and CWD-suspect animals and herds under movement restrictions, with movement of animals from them only for destruction or under permit.

(5) Has effectively implemented policies to:

(i) Promptly investigate all animals reported as CWD-suspect animals;

(ii) Designate herds as CWD-positive, CWD-exposed, or CWD-suspect and

promptly restrict movement of animals from the herd after an APHIS employee or State representative determines that the herd contains or has contained a CWD-positive animal;

(iii) Remove herd movement restrictions only after completion of a herd plan agreed upon by the State representative, APHIS, and the owner;

(iv) Conduct an epidemiologic investigation of CWD-positive, CWD-exposed, and CWD-suspect herds that includes the designation of suspect and exposed animals and that identifies animals to be traced;

(v) Conduct tracebacks of CWD-positive animals and traceouts of CWD-exposed animals and report any out-of-State traces to the appropriate State promptly after receipt of notification of a CWD-positive animal; and

(vi) Conduct tracebacks based on slaughter or other sampling promptly after receipt of notification of a CWD-positive animal at slaughter.

(6) Effectively monitors and enforces State quarantines and State reporting laws and regulations for CWD.

(7) Has designated at least one State animal health official, or has worked with APHIS to designate an APHIS official, to coordinate CWD Herd Certification Program activities in the State.

(8) Has programs to educate those engaged in the interstate movement of deer, elk, and moose regarding the identification and recordkeeping requirements of this part.

(9) Requires, based on State law or regulation, and effectively enforces identification of all animals in herds participating in the CWD Herd Certification Program;

(10) Maintains in the CWD National Database administered by APHIS, or in a State database approved by the Administrator as compatible with the CWD National Database, the State's:

(i) Premises information and assigned premises numbers;

(ii) Individual animal information on all deer, elk, and moose in herds participating in the CWD Herd Certification Program in the State;

(iii) Individual animal information on all out-of-State deer, elk, and moose to be traced; and

(iv) Accurate herd status data.

(11) Requires that tissues from all CWD-exposed or CWD-suspect animals that die or are depopulated or otherwise killed be submitted to a laboratory authorized by the Administrator to conduct official CWD tests and requires appropriate disposal of the carcasses of CWD-positive, CWD-exposed, and CWD-suspect animals.

(b) *Responsibilities of enrolled herd owners.* Herd owners who enroll in the CWD Herd Certification Program agree to maintain their herds in accordance with the following conditions:

(1) Each animal in the herd must be identified using means of animal identification specified in § 55.25 of this subpart. All animals in an enrolled herd must be identified before reaching 12 months of age. In addition, all animals of any age in an enrolled herd must be identified before being moved from the herd premises. In addition, all animals in an enrolled herd must be identified before the inventory required under paragraph (b)(4) of this section, and animals found to be in violation of this requirement during the inventory must be identified during or after the inventory on a schedule specified by the APHIS employee or State representative conducting the inventory;

(2) The herd premises must have perimeter fencing adequate to prevent ingress or egress of cervids. This fencing must also comply with any applicable State regulations;

(3) The owner must immediately report to an APHIS employee or State representative all animals that escape or disappear, and all deaths (including animals killed on premises maintained for hunting and animals sent to slaughter) of deer, elk, and moose in the herd aged 12 months or older; *Except that*, APHIS employees or State representatives may approve reporting schedules other than immediate notification when herd conditions warrant it in the opinion of both APHIS and the State. The report must include the identification numbers of the animals involved and the estimated time and date of the death, escape, or disappearance. For animals that die (including animals killed on premises maintained for hunting and animals sent to slaughter), the owner must inform an APHIS or State representative and must make

the carcasses of the animals available for tissue sampling and testing in accordance with instructions from the APHIS or State representative. In cases where animals escape or disappear and thus are not available for tissue sampling and testing, an APHIS representative will investigate whether the unavailability of animals for testing constitutes a failure to comply with program requirements and will affect the herd's status in the CWD Herd Certification Program;

(4) The owner must maintain herd records that include a complete inventory of animals that states the age and sex of each animal, the date of acquisition and source of each animal that was not born into the herd, the date of disposal and destination of any animal removed from the herd, and all individual identification numbers (from tags, tattoos, electronic implants, etc.) associated with each animal. Upon request, the owner must allow an APHIS employee or State representative access to the premises and herd to conduct an annual physical herd inventory with verification reconciling animals and identifications with the records maintained by the owner. The owner must present the entire herd for inspection under conditions where the APHIS employee or State representative can safely read all identification on the animals. The owner will be responsible for assembling, handling and restraining the animals and for all costs incurred to present the animals for inspection;

(5) If an owner wishes to maintain separate herds, he or she must maintain separate herd inventories, records, working facilities, water sources, equipment, and land use. There must be a buffer zone of at least 30 feet between the perimeter fencing around separate herds, and no commingling of animals may occur. Movement of animals between herds must be recorded as if they were separately owned herds;

(6) New animals may be introduced into the herd only from other herds enrolled in the CWD Herd Certification Program. If animals are received from an enrolled herd with a lower program status, the receiving herd will revert to that lower program status. If animals are obtained from a herd not partici-

pating in the program, then the receiving herd will be required to start over in the program.

(Approved by the Office of Management and Budget under control number 0579-0237)

§ 55.24 Herd status.

(a) *Initial and subsequent status.* When a herd is first enrolled in the CWD Herd Certification Program, it will be placed in First Year status, except that; if the herd is comprised solely of animals obtained from herds already enrolled in the Program, the newly enrolled herd will have the same status as the lowest status of any herd that provided animals for the new herd. If the herd continues to meet the requirements of the CWD Herd Certification Program, each year, on the anniversary of the enrollment date the herd status will be upgraded by 1 year; i.e., Second Year status, Third Year status, Fourth Year status, and Fifth Year status. One year from the date a herd is placed in Fifth Year status, the herd status will be changed to "Certified", and the herd will remain in "Certified" status as long as it is enrolled in the program, provided its status is not lost or suspended in accordance with this section. Once the herd has received "Certified" status, slaughter surveillance and surveillance of animals killed in shooter operations will no longer be required, but other requirements of the program will remain in force.

(b) *Loss or suspension of herd status.*

(1) If a herd is designated a CWD-positive herd or a CWD-exposed herd, it will immediately lose its program status and may only reenroll after entering into a herd plan.

(2) If a herd is designated a CWD-suspect herd, a trace back herd, or a trace forward herd, it will immediately be placed in Suspended status pending an epidemiologic investigation by APHIS or a State animal health agency. If the epidemiologic investigation determines that the herd was not commingled with a CWD-positive animal, the herd will be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level.

(i) If the epidemiologic investigation determines that the herd was commingled with a CWD-positive animal, the herd will lose its program status and will be designated a CWD-exposed herd.

(ii) If the epidemiological investigation is unable to make a determination regarding the exposure of the herd, because the necessary animal or animals are no longer available for testing (i.e. a trace animal from a known positive herd died and was not tested) or for other reasons, the herd status will continue as Suspended unless and until a herd plan is developed for the herd. If a herd plan is developed and implemented, the herd will be reinstated to its former program status, and the time spent in Suspended status will count toward its promotion to the next herd status level; *Except that*, if the epidemiological investigation finds that the owner of the herd has not fully complied with program requirements for animal identification, animal testing, and recordkeeping, the herd will be reinstated into the CWD Herd Certification Program at the First Year status level, with a new enrollment date set at the date the herd entered into Suspended status. Any herd reinstated after being placed in Suspended status must then comply with the requirements of the herd plan as well as the requirements of the CWD Herd Certification Program. The herd plan will require testing of all animals that die in the herd for any reason, regardless of the age of the animal, may require movement restrictions for animals in the herd based on epidemiologic evidence regarding the risk posed by the animals in question, and may include other requirements found necessary to control the risk of spreading CWD.

(3) If an APHIS or State representative determines that animals from a herd enrolled in the program have commingled with animals from a herd with a lower program status, the herd with the higher program status will be reduced to the status of the herd with which its animals commingled.

(c) *Cancellation of enrollment by Administrator.* The Administrator may cancel the enrollment of an enrolled herd by giving written notice to the herd owner. In the event of such cancellation, the herd owner may not re-

apply to enroll in the CWD Herd Certification Program for 5 years from the effective date of the cancellation. The Administrator may cancel enrollment after determining that the herd owner failed to comply with any requirements of this section. Before enrollment is canceled, an APHIS representative will inform the herd owner of the reasons for the proposed cancellation.

(1) Herd owners may appeal cancellation of enrollment or loss or suspension of herd status by writing to the Administrator within 10 days after being informed of the reasons for the proposed action. The appeal must include all of the facts and reasons upon which the herd owner relies to show that the reasons for the proposed action are incorrect or do not support the action. The Administrator will grant or deny the appeal in writing as promptly as circumstances permit, stating the reason for his or her decision. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator. However, cancellation of enrollment or loss or suspension of herd status shall become effective pending final determination in the proceeding if the Administrator determines that such action is necessary to prevent the possible spread of CWD. Such action shall become effective upon oral or written notification, whichever is earlier, to the herd owner. In the event of oral notification, written confirmation shall be given as promptly as circumstances allow. This cancellation of enrollment or loss or suspension of herd status shall continue in effect pending the completion of the proceeding, and any judicial review thereof, unless otherwise ordered by the Administrator.

(2) [Reserved]

(d) *Herd status of animals added to herds.* A herd may add animals from herds with the same or a higher herd status in the CWD Herd Certification Program with no negative impact on the certification status of the receiving herd.² If animals are acquired from a

²Note that in addition to this requirement, §81.3 of this chapter restricts the interstate movement of farmed and captive deer, elk, and moose based on their status in the CWD Herd Certification Program.

herd with a lower herd status, the receiving herd reverts to the program status of the sending herd. If a herd participating in the CWD Herd Certification Program acquires animals from a nonparticipating herd, the receiving herd reverts to First Year status with a new enrollment date of the date of acquisition of the animal.

(Approved by the Office of Management and Budget under control number 0579-0237.)

§ 55.25 Animal identification.

Each animal required to be identified by this subpart must have at least two forms of animal identification attached to the animal. The means of animal identification must be approved for this use by APHIS, and must be an electronic implant, flank tattoo, ear tattoo, tamper-resistant ear tag, or other device approved by APHIS. One of the animal identifications must be official animal identification as defined in this part, with a nationally unique animal identification number that is linked to that animal in the CWD National Database. The second animal identification must be unique for the individual animal within the herd and also must be linked to that animal and herd in the CWD National Database.

(Approved by the Office of Management and Budget under control number 0579-0237)

PART 56—CONTROL OF H5/H7 LOW PATHOGENIC AVIAN INFLUENZA

Sec.

- 56.1 Definitions.
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- 56.10 Initial State response and containment plan.

AUTHORITY: 7 U.S.C. 8301-8317; 7 CFR 2.22, 2.80, and 371.4.

SOURCE: 71 FR 56323, Sept. 26, 2006, unless otherwise noted.

§ 56.1 Definitions.

Administrator. The Administrator, Animal and Plant Health Inspection Service, or any other employee of the Animal and Plant Health Inspection Service delegated to act in the Administrator's stead.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

Breeding flock. A flock that is composed of stock that has been developed for commercial egg or meat production and is maintained for the principal purpose of producing chicks for the ultimate production of eggs or meat for human consumption.

Classification. A designation earned by participation in a Plan program.

Commercial meat-type flock. All of the meat-type chickens or meat-type turkeys on one farm. However, at the discretion of the Official State Agency, any group of poultry which is segregated from another group in a manner sufficient to prevent the transmission of H5/H7 LPAI and has been so segregated for a period of at least 21 days may be considered as a separate flock.

Commercial table-egg layer flock. All table-egg layers of one classification in one barn or house.

Commercial table-egg layer premises. A farm containing contiguous flocks of commercial table-egg layers under common ownership.

Cooperating State Agency. Any State authority recognized by the Department to cooperate in the administration of the provisions of this part 56. This may include the State animal health authority or the Official State Agency.

Department. The U.S. Department of Agriculture.

Domesticated. Propagated and maintained under the control of a person.

Flock plan. A written flock management agreement developed by APHIS and the Official State Agency with input from the flock owner and other affected parties. A flock plan sets out the steps to be taken to eradicate H5/H7 LPAI from a positive flock, or to prevent introduction of H5/H7 LPAI into another flock. A flock plan shall include, but is not necessarily limited

to, poultry and poultry product movement and geographically appropriate infected and control/monitoring zones. Control measures in the flock plan should include detailed plans for safe handling of conveyances, containers, and other associated materials that could serve as fomites; disposal of flocks; cleaning and disinfection; downtime; and repopulation.

H5/H7 low pathogenic avian influenza (LPAI). An infection of poultry caused by an influenza A virus of H5 or H7 subtype that has an intravenous pathogenicity index test in 6-week-old chickens less than 1.2 or any infection with influenza A viruses of H5 or H7 subtype for which nucleotide sequencing has not demonstrated the presence of multiple basic amino acids at the cleavage site of the hemagglutinin.

H5/H7 LPAI exposed. At risk of developing H5/H7 LPAI because of association with birds or poultry infected with H5/H7 LPAI, excrement from birds or poultry infected with H5/H7 LPAI, or other material touched by birds or poultry infected with H5/H7 LPAI, or because there is reason to believe that association has occurred with H5/H7 LPAI or vectors of H5/H7 LPAI, as determined by the Cooperating State Agency and confirmed by APHIS.

H5/H7 LPAI virus infection (infected). Poultry will be considered to be infected with H5/H7 LPAI for the purposes of this part if:

- (1) H5/H7 LPAI virus has been isolated and identified as such from poultry; or
- (2) Viral antigen or viral RNA specific to the H5 or H7 subtype of AI virus has been detected in poultry; or
- (3) Antibodies to the H5 or H7 subtype of the AI virus that are not a consequence of vaccination have been detected in poultry. If vaccine is used, methods should be used to distinguish vaccinated birds from birds that are both vaccinated and infected. In the case of isolated serological positive results, H5/H7 LPAI infection may be ruled out on the basis of a thorough epidemiological investigation that does not demonstrate further evidence of H5/H7 LPAI infection.

Meat-type chicken. A domesticated chicken grown for the primary purpose of producing meat including but not

limited to broilers, roasters, fryers, and cornish.

Meat-type turkey. A domesticated turkey grown for the primary purpose of producing meat.

Mortgage. Any mortgage, lien, or other security or beneficial interest held by any person other than the one claiming indemnity for the destruction of poultry or eggs due to H5/H7 LPAI.

Official appraiser (APHIS official appraiser, State official appraiser). A person authorized by APHIS to appraise poultry for the purposes of this part. A State official appraiser is selected by a State and authorized by APHIS.

Official State Agency. The State authority recognized by the Department to cooperate in the administration of the Plan.

Plan. The provisions of the National Poultry Improvement Plan contained in parts 145, 146, and 147 of this chapter.

Poultry. Domesticated fowl, including chickens, turkeys, ostriches, emus, rheas, cassowaries, waterfowl, and game birds, except doves and pigeons, which are bred for the primary purpose of producing eggs or meat.

Secretary. The Secretary of the United States Department of Agriculture, or any officer or employee of the Department delegated to act in the Secretary's stead.

State. Any of the States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands of the United States, or any territory or possession of the United States.

Table-egg layer. A domesticated chicken grown for the primary purpose of producing eggs for human consumption.

United States. All of the States.

§ 56.2 Cooperation with States.

(a) The Administrator has been delegated the authority to cooperate with Cooperating State Agencies in the eradication of H5/H7 LPAI. This cooperation may include, but is not necessarily limited to, the following activities:

- (1) Payment to Cooperating State Agencies for surveillance and monitoring associated with poultry that

have been infected with or exposed to H5/H7 LPAI;

(2) Transfer of vaccine for H5/H7 LPAI to Cooperating State Agencies if provided for in the initial State response and containment plan developed by the Official State Agency and approved by APHIS under § 56.10; and

(3) Payment for vaccine administration by Cooperating State Agencies, if provided for in the initial State response and containment plan developed by the Official State Agency and approved by APHIS under § 56.10

(b)(1) Any payment made to a State or an Official State Agency for the activities listed in paragraphs (a)(1) and (a)(3) of this section must be made through a cooperative agreement between the Cooperating State Agency and APHIS. The payment for which the Cooperating State Agency is eligible will be determined in the cooperative agreement.

(i) For any Cooperating State Agency that participates in the National Poultry Improvement Plan diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14 of this chapter, and has an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS, as described in § 56.10 of this part, the cooperative agreement will provide that the Cooperating State Agency is eligible for payment of 100 percent of the costs of surveillance and monitoring and 100 percent of the costs of vaccine administration, as determined in the cooperative agreement.

(ii) For any Cooperating State Agency that does not meet the criteria in paragraph (b)(1)(i) of this section, the cooperative agreement will provide that the Cooperating State Agency is eligible for payment of 25 percent of the costs of surveillance and monitoring and 25 percent of the costs of vaccine administration, as determined in the cooperative agreement.

(2) Transfer of vaccine under paragraph (a)(2) of this section must be accomplished through a cooperative agreement between the Cooperating State Agency and APHIS.

(c) States will be responsible for making the determination to request Federal assistance under this part in

the event of an outbreak of H5/H7 LPAI.

§ 56.3 Payment of indemnity.

(a) *Activities eligible for indemnity.* The Administrator may pay indemnity for the activities listed in paragraphs (a)(1) through (a)(3) of this section, as provided in paragraph (b) of this section:

(1) Destruction and disposal of poultry that were infected with or exposed to H5/H7 LPAI;

(2) Destruction of any eggs destroyed during testing of poultry for H5/H7 LPAI during an outbreak of H5/H7 LPAI; and

(3) Cleaning and disinfection of premises, conveyances, and materials that came into contact with poultry that were infected with or exposed to H5/H7 LPAI; or, in the case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, the destruction and disposal of the materials.

(b) *Percentage of costs eligible for indemnity.* Except for poultry that are described by the categories in paragraphs (b)(1) through (b)(7) of this section, the Administrator is authorized to pay 100 percent of the costs, as determined in accordance with § 56.4, of the activities described in paragraphs (a)(1) through (a)(3) of this section, regardless of whether the infected or exposed poultry participate in the Plan. For infected or exposed poultry that are described by the categories in paragraphs (b)(1) through (b)(7) of this section, the Administrator is authorized to pay 25 percent of the costs of the activities described in paragraphs (a)(1) through (a)(3) of this section:

(1) The poultry are egg-type breeding chickens from a flock that participates in any Plan program in part 145 of this chapter but that does not participate in the U.S. Avian Influenza Clean program of the Plan in § 145.23(h) of this chapter; or

(2) The poultry are meat-type breeding chickens from a flock that participates in any Plan program in part 145 of this chapter but that does not participate in the U.S. Avian Influenza

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Clean program of the Plan in § 145.33(l) of this chapter; or

(3) The poultry are breeding turkeys from a flock that participates in any Plan program in part 145 of this chapter but that does not participate in the U.S. H5/H7 Avian Influenza Clean program of the Plan in § 145.43(g) of this chapter; or

(4) The poultry are commercial table-egg layers from a premises that has 75,000 or more birds and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program of the Plan in § 146.23(a) of this chapter; or

(5) The poultry are commercial meat-type chickens that are associated with a slaughter plant that slaughters 200,000 or more meat-type chickens per operating week and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program of the Plan in § 146.33(a) of this chapter; or

(6) The poultry are commercial meat-type turkeys that are associated with a slaughter plant that slaughters 2 million or more meat-type turkeys in a 12-month period and that does not participate in the U.S. H5/H7 Avian Influenza Monitored program of the Plan in § 146.43(a) of this chapter; or

(7) The poultry are associated with a flock or slaughter plant that participates in the Plan, but they are located in a State that does not participate in the National Poultry Improvement Plan diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14 of this chapter, or that does not have an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS, unless such poultry participate in the Plan with another State that does participate in the National Poultry Improvement Plan diagnostic surveillance program for H5/H7 LPAI, as described in § 146.14 of this chapter, and has an initial State response and containment plan for H5/H7 LPAI that is approved by APHIS.

(c) *Other sources of payment.* If the recipient of indemnity for any of the activities listed in paragraphs (a)(1) through (a)(3) of this section also receives payment for any of those activities from a State or from other sources, the indemnity provided under this part will be reduced by the total

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amount of payment received from the State or other sources.

§ 56.4 Determination of indemnity amounts.

(a) *Destruction and disposal of poultry.*

(1) Indemnity for the destruction of poultry infected with or exposed to H5/H7 LPAI will be based on the fair market value of the poultry, as determined by an appraisal. Poultry infected with or exposed to H5/H7 LPAI that are removed by APHIS or a Cooperating State Agency from a flock will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree, by either an APHIS official appraiser or a State official appraiser alone. For laying hens, the appraised value should include the hen's projected future egg production. Appraisals of poultry must be reported on forms furnished by APHIS and signed by the appraisers and must be signed by the owners of the poultry to indicate agreement with the appraisal amount. Appraisals of poultry must be signed by the owners of the poultry prior to the destruction of the poultry, unless the owners, APHIS, and the Cooperating State Agency agree that the poultry may be destroyed immediately. Reports of appraisals must show the number of birds and the value per head.

(2) Indemnity for disposal of poultry infected with or exposed to H5/H7 LPAI will be based on receipts or other documentation maintained by the claimant verifying expenditures for disposal activities authorized by this part. Any disposal of poultry infected with or exposed to H5/H7 LPAI for which compensation is requested must be performed under a compliance agreement between the claimant, the Cooperating State Agency, and APHIS. APHIS will review claims for compensation for disposal to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10. If disposal is performed by the Cooperating State Agency, APHIS will indemnify the Cooperating State Agency for disposal under a cooperative agreement.

(3) The destruction and disposal of the indemnified poultry must be conducted in accordance with the initial State response and containment plan for H5/H7 LPAI, as described in § 56.10.

(b) *Destruction of eggs.* Indemnity for eggs destroyed during an outbreak for testing for H5/H7 LPAI will be based on the fair market value of the eggs, as determined by an appraisal. Eggs destroyed for testing for H5/H7 LPAI will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree, by either an APHIS official appraiser or a State official appraiser alone. Appraisals of eggs must be reported on forms furnished by APHIS and signed by the appraisers and must be signed by the owners of the eggs to indicate agreement with the appraisal amount. Appraisals of eggs must be signed by the owners of the eggs prior to the destruction of the poultry, unless the owners, APHIS, and the Cooperating State Agency agree that the eggs may be destroyed immediately. Reports of appraisals must show the number of eggs and the value per egg.

(c) *Cleaning and disinfection.* (1) Indemnity for cleaning and disinfection of premises, conveyances, and materials that came into contact with poultry that are infected with or exposed to H5/H7 LPAI will be based on receipts or other documentation maintained by the claimant verifying expenditures for cleaning and disinfection activities authorized by this part. Any cleaning and disinfection of premises, conveyances, and materials for which indemnity is requested must be performed under a compliance agreement between the claimant, the Cooperating State Agency, and APHIS. APHIS will review claims for indemnity for cleaning and disinfection to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10.

(2) In the case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, indemnity for the destruction of the materials will be based on the fair market value of those materials, as determined by an

appraisal. Materials will be appraised by an APHIS official appraiser and a State official appraiser jointly, or, if APHIS and State authorities agree, by either an APHIS official appraiser or a State official appraiser alone. Indemnity for disposal of the materials will be based on receipts or other documentation maintained by the claimant verifying expenditures for disposal activities authorized by this part. Any disposal of materials for which indemnity is requested must be performed under a compliance agreement between the claimant, the Cooperating State Agency, and APHIS. APHIS will review claims for compensation for disposal to ensure that all expenditures relate directly to activities described in § 56.5 and in the initial State response and containment plan described in § 56.10.

§ 56.5 Destruction and disposal of poultry and cleaning and disinfection of premises, conveyances, and materials.

(a) *Destruction of poultry.* Poultry that are infected with or exposed to H5/H7 LPAI may be required to be destroyed at the discretion of the Cooperating State Agency and APHIS and in accordance with the initial State response and containment plan described in § 56.10. The Cooperating State Agency and APHIS will select a method to use for the destruction of such poultry based on the following factors:

- (1) The species, size, and number of the poultry to be destroyed;
- (2) The environment in which the poultry are maintained;
- (3) The risk to human health or safety of the method used;
- (4) Whether the method requires specialized equipment or training;
- (5) The risk that the method poses of spreading the H5/H7 LPAI virus;
- (6) Any hazard the method could pose to the environment;
- (7) The degree of bird control and restraint required to administer the destruction method; and
- (8) The speed with which destruction must be conducted.

(b) *Disposal of poultry.* Carcasses of poultry that have died from H5/H7 LPAI infection or poultry that have been humanely slaughtered to fulfill

depopulation requirements must be disposed of promptly and efficiently in accordance with the initial State response and containment plan described in § 56.10 to prevent the spread of H5/H7 LPAI infection. Disposal methods will be selected by the Cooperating State Agency and APHIS and may include one or more of the following: Burial, incineration, composting, or rendering. Regardless of the method used, strict biosecurity procedures must be implemented and enforced for all personnel and vehicular movement into and out of the area in accordance with the initial State response and containment plan to prevent dissemination of the H5/H7 LPAI virus.

(c) *Controlled marketing.* (1) At the discretion of the Cooperating State Agency and APHIS, poultry that has been infected with or exposed to H5/H7 LPAI may be allowed to move for controlled marketing in accordance with the initial State response and containment plan described in § 56.10 and in accordance with the following requirements:

(i) Poultry infected with or exposed to H5/H7 LPAI must not be transported to a market for controlled marketing until 21 days after the acute phase of the infection has concluded, as determined by the Cooperating State Agency in accordance with the initial State response and containment plan described in § 56.10; and

(ii) Within 7 days prior to slaughter, each flock to be moved for controlled marketing must be tested for H5/H7 LPAI using a test approved by the Cooperating State Agency and found to be free of the virus.

(2) Poultry moved for controlled marketing will not be eligible for indemnity under § 56.3.

(d) *Cleaning and disinfection of premises, conveyances, and materials.* Premises, conveyances, and materials that came into contact with poultry infected with or exposed to H5/H7 LPAI must be cleaned and disinfected; *Provided*, that materials for which the cost of cleaning and disinfection would exceed the value of the materials or for which cleaning and disinfection would be impracticable for any reason may be destroyed and disposed. Cleaning and disinfection must be performed in ac-

cordance with the initial State response and containment plan described in § 56.10, which must be approved by APHIS. This paragraph (d) provides guidelines for the development of a cleaning and disinfection plan for a premises and for the materials and conveyances on that premises.

(1) *Preparation for cleaning and disinfection.* Following the depopulation or controlled marketing of all poultry infected with or exposed to H5/H7 LPAI on a premises, the following procedures should be completed prior to cleaning and disinfection:

(i) Secure and remove all feathers that might blow around outside the house in which the infected or exposed poultry were held by raking them together and burning the pile;

(ii) Apply insecticides and rodenticides immediately after the removal of the birds, before the house cools;

(iii) Close the house in which the poultry were held, maintaining just enough ventilation to remove moisture. Leave the house undisturbed for a minimum of 21 days and for as long as possible thereafter, in order to allow as much H5/H7 LPAI virus as possible to die a natural death.

(iv) Heat the house to 100 °F for the 72 hours prior to cleaning and disinfection.

(2) *Cleaning and disinfection.* All premises, conveyances, and materials that came into contact with poultry that were infected with or exposed to H5/H7 LPAI must be cleaned and disinfected. Cleaning and disinfection must be performed on all buildings that came into contact with poultry that were infected with or exposed to H5/H7 LPAI within a premises, including pumphouses and service areas. To accomplish cleaning and disinfection, the following procedures should be completed:

(i) *Disposal of manure, debris, and feed.* Clean up all manure, debris, and feed. Compost manure, debris, and feed in the house if possible. If this is not possible, set up a system for hauling manure, debris, and feed to an approved site for burial, piling, or composting. Do not clean out the house or move or spread litter until any H5/H7 LPAI virus that may have contaminated the

manure and litter is dead, as determined by the Cooperating State Agency and in accordance with the initial State response and containment plan described in § 56.10. If composting is used as a disposal method, manure and litter should be composted in accordance with State and local regulations. If litter is piled, the litter pile must be covered and allowed to sit undisturbed for an amount of time approved by the Cooperating State Agency and APHIS and in accordance the initial State response and containment plan described in § 56.10. Drying and heat *in situ* over time are effective and may be used in place of composting if weather conditions or conditions in the building are favorable. After use, equipment used to clean out manure, debris, and feed must be washed, disinfected, and inspected at the site to which the manure and litter was transported. In the case of inclement weather, the equipment may be washed, disinfected, and inspected at off-site wash stations at the discretion of the Cooperating State Agency and APHIS.

(ii) *Cleaning of premises and materials.* Cleaning and washing should be thorough to ensure that all materials or substances contaminated with H5/H7 LPAI virus, especially manure, dried blood, and other organic materials, are removed from all surfaces. Spray all contaminated surfaces above the floor with soap and water to knock dust down to the floor, using no more water than necessary. Wash equipment and houses with soap and water. Disassemble equipment as required to clean all contaminated surfaces. Special attention should be given to automatic feeders and other closed areas to ensure adequate cleaning. Inspect houses and equipment to ensure that cleaning has removed all contaminated materials or substances and let houses and equipment dry completely before applying disinfectant.

(iii) *Disinfection of premises and materials.* When cleaning has been completed and all surfaces are dry, all interior surfaces of the structure should be saturated with a disinfectant authorized in § 71.10(a) of this chapter. A power spray unit should be used to spray the disinfectant on all surfaces, making sure that the disinfectant gets

into cracks and crevices. Special attention should be given to automatic feeders and other closed areas to ensure adequate disinfection.

(vi) *Cleaning and disinfection of conveyances.* Clean and disinfect all trucks and vehicles used in transporting affected poultry or materials before soil dries in place. Both exterior, including the undercarriage, and interior surfaces, including truck cabs, must be cleaned. The interior of the truck cabs should be washed with clean water and sponged with a disinfectant authorized in § 71.10(a) of this chapter. Manure and litter removed from these vehicles should be handled in a manner similar to that described in paragraph (d)(2)(i) of this section.

(3) *Activities after cleaning and disinfection.* Premises should be checked for virus before repopulation in accordance with the initial State response and containment plan described in § 56.10. The premises may not be restocked with poultry until after the date specified in the initial State response and containment plan described in § 56.10.

(4) *Destruction and disposal of materials.* In the case of materials for which the cost of cleaning and disinfection would exceed the value of the materials or for which cleaning and disinfection would be impracticable for any reason, the destruction and disposal of the materials must be conducted in accordance with the initial State response and containment plan described in § 56.10.

§ 56.6 Presentation of claims for indemnity.

Claims for the following must be documented on a form furnished by APHIS and presented to an APHIS employee or the State representative authorized to accept the claims:

(a) Compensation for the value of poultry to be destroyed due to infection with or exposure to H5/H7 LPAI;

(b) Compensation for the value of eggs to be destroyed during testing for H5/H7 LPAI; and

(c) Compensation for the cost of cleaning and disinfection of premises, conveyances, and materials that came into contact with poultry infected with or exposed to H5/H7 LPAI, or, in the

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case of materials, if the cost of cleaning and disinfection would exceed the value of the materials or cleaning and disinfection would be impracticable for any reason, the cost of destruction and disposal for the materials.

§ 56.7 Mortgage against poultry or eggs.

When poultry or eggs have been destroyed under this part, any claim for indemnity must be presented on forms furnished by APHIS. The owner of the poultry or eggs must certify on the forms that the poultry or eggs covered are, or are not, subject to any mortgage as defined in this part. If the owner states there is a mortgage, the owner and each person holding a mortgage on the poultry or eggs must sign the APHIS-furnished form, consenting to the payment of indemnity to the person specified on the form.

§ 56.8 Conditions for payment.

(a) When poultry or eggs have been destroyed pursuant to this part, the Administrator may pay claims to any party with which the owner of the poultry or eggs has entered into a contract for the growing or care of the poultry or eggs. The indemnity the Administrator may pay to such a party or parties shall be determined as follows:

(1) Divide the value of the contract the owner of the poultry or eggs entered into with another party for the growing and care of the poultry or eggs in dollars by the duration of the contract as it was signed prior to the H5/H7 LPAI outbreak in days;

(2) Multiply this figure by the time in days between the date the other party began to provide services relating to the destroyed poultry or eggs under the contract and the date the birds were destroyed due to H5/H7 LPAI.

(b)(1) If indemnity for the destroyed poultry or eggs is being provided for 100 percent of eligible costs under § 56.3(b), the Administrator may pay contractors eligible for compensation under this section 100 percent of the indemnity determined in paragraph (a) of this section.

(2) If indemnity for the destroyed poultry or eggs is being provided for 25 percent of eligible costs under § 56.3(b), the Administrator may pay contrac-

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tors eligible for compensation under this section 25 percent of the indemnity determined in paragraph (a) of this section.

(c) If indemnity is paid to a contractor under this section, the owner of the poultry or eggs will be eligible to receive the difference between the indemnity paid to the growers and the total amount of indemnity that may be paid for the poultry or eggs.

(d) In the event that determination of indemnity to a party with which the owner of destroyed poultry or eggs has entered into a contract for the growing or care of the poultry or eggs using the method described in paragraph (a) of this section is determined to be impractical or inappropriate, APHIS may use any other method that the Administrator deems appropriate to make that determination.

§ 56.9 Claims not allowed.

(a) The Department will not allow claims arising out of the destruction of poultry unless the poultry have been appraised as prescribed in this part and the owners have signed the appraisal form indicating agreement with the appraisal amount as required by § 56.4(a)(1).

(b) The Department will not allow claims arising out of the destruction of poultry unless the owners have signed a written agreement with APHIS in which they agree that if they maintain poultry in the future on the premises used for poultry for which indemnity is paid, they will maintain the poultry in accordance with a plan set forth by the Cooperating State Agency and will not introduce poultry onto the premises until after the date specified by the Cooperating State Agency. Persons who do not maintain their poultry and premises in accordance with this written agreement will not be eligible to receive indemnity under this part.

(c) The Department will not allow claims arising out of the destruction of poultry unless the poultry have been moved or handled by the owner in accordance with an agreement for the control and eradication of H5/H7 LPAI and in accordance with part 56, for any progeny of any poultry unless the poultry have been moved or handled by the

owner in accordance with an agreement for the control and eradication of H5/H7 LPAI and in accordance with part 56, or for any poultry that become or have become infected with or exposed to H5/H7 LPAI because of actions not in accordance with an agreement for the control and eradication of H5/H7 LPAI or a violation of this part.

§ 56.10 Initial State response and containment plan.

(a) In order for poultry owners within a State to be eligible for indemnity for 100 percent of eligible costs under § 56.3(b), the State in which the poultry participate in the Plan must have in place an initial State response and containment plan that has been approved by APHIS. The initial State response and containment plan must be developed by the Official State Agency and administered by the Cooperating State Agency of the relevant State. This plan must include:

- (1) Provisions for a standing emergency disease management committee, regular meetings, and exercises, including coordination with any tribal governments that may be affected;
- (2) A minimum biosecurity plan followed by all poultry producers;
- (3) Provisions for adequate diagnostic resources;
- (4) Detailed, specific procedures for initial handling and investigation of suspected cases of H5/H7 LPAI;
- (5) Detailed, specific procedures for reporting test results to APHIS. These procedures must be developed after appropriate consultation with poultry producers in the State and must provide for the reporting only of con-

firmed cases of H5/H7 LPAI in accordance with § 146.13 of this chapter;

(6) Detailed, strict quarantine measures for presumptive and confirmed index cases;

(7) Provisions for developing flock plans for infected and exposed flocks;

(8) Detailed plans for disposal of infected flocks, including preexisting agreements with regulatory agencies and detailed plans for carcass disposal, disposal sites, and resources for conducting disposal, and detailed plans for disposal of materials that come into contact with poultry infected with or exposed to H5/H7 LPAI;

(9) Detailed plans for cleaning and disinfection of premises, repopulation, and monitoring after repopulation;

(10) Provisions for appropriate control/monitoring zones, contact surveys, and movement restrictions;

(11) Provisions for monitoring activities in control zones;

(12) If vaccination is considered as an option, a written plan for use in place with proper controls and provisions for APHIS approval of any use of vaccine;

(13) Plans for H5/H7 LPAI-negative flocks that provide for quarantine, testing, and controlled marketing; and

(14) Public awareness and education programs regarding avian influenza.

(b) If a State is designated a U.S. Avian Influenza Monitored State, Layers under § 146.24(a) of this chapter or a U.S. Avian Influenza Monitored State, Turkeys under § 146.44(a) of this chapter, it will lose that status during any outbreak of H5/H7 LPAI and for 90 days after the destruction and disposal of all infected or exposed birds and cleaning and disinfection of all affected premises are completed.